

As the details of land etc. cannot be entered in the counterfoil receipt, ryots have a right to

- (a) inspect village forms viii-A and viii-B
- (b) have a copy of viii-A or viii-B on payment of one anna each, and
- (c) to have the copy of viii-A corrected from time to time free of charge. (paragraphs 14 to 16 on page 113 of Mr. Anderson's Manual).

Penalty
for failure
to grant
receipts.

59. Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

CHAPTER VI.

OF THE GRANT, USE AND RELINQUISHMENT OF UNALIENATED LAND. [a]

Written
permission
of
Mámlatdár
or Mahál-
kari re-
quired pre-
vious to
taking up
unoccu-
pied land

[^b] **60.** Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mámlatdar or Mahálkari.

[a] This heading was substituted by Bom. IV of 1913, s. 19, for the original heading which was as follows:—

Of the occupation of unalienated land and the rights of occupants.

[b] As to the local repeal of s. 60, see para. 5 of foot-note [a] on page I, *supra*.

N. 1. Application for leave to extend cultivation is exempt from Court Fees. (*Vide* para. 11 of Section 19 of the Court Fees Act, VII, of 1870.)

N. 2. The applicant delivers an agreement or lease in respect of the land and the permission is given in a prescribed form.

N. 3. *Vide*, J 1 under s. 211.

G. 1 It was not the intention of the Legislature to interfere with the right of an Inamdar to give out unoccupied land for cultivation in his village.

G. R. 5730 1st October 1881 and 959, 10th February 1882.

G. 2. In the case of minors or Lunatics the Collector cannot accept an agreement from their friends or relations who have no legal power to act on their behalf.

(G. R. 7074, 11th October 1882.)

G. 3. Application for leave to occupy land when made by a person who does not at the time of application hold any land is exempt from Court Fees. (G. of I. N. No. 3626, dated 23rd September 1884, published in the B. G. G. Part I., page 735, 1884.)

J. 1. The sale of unoccupied land, held by Mamlatdars under Section 62 and permission to occupy such land given under Section 60, are within the scope of Section 211 as proceedings, which the Commissioner has jurisdiction to call for and revise and to pass such order thereon as he deems fit and no suit would lie against Government on account of that officer exercising his legal powers under that section. (P. J. 230, Parapa *vs.* The Secretary of State for India, 1891.)

[^a] 61. Any person who shall unauthori- Penalties for unauthor-
zedly occupy any land set apart for any special ized occupa-
purpose, or any unoccupied land which has not tion of
been alienated, shall, land.

if the land which he unauthorizedly occupies forms part of an assessed survey number, pay the assessment of the entire number for the whole period of his occupation, and

if the land so occupied by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land [b] used for [b] the same purpose ;

and shall also be liable, at the discretion of the Collector, to a fine not exceeding five rupees, or a sum equal to ten times the amount of assessment payable by him for one year, if such sum be in excess of five rupees, if he have taken up the land for purposes of cultivation, and not exceeding such limit as may be fixed in rules [c] made in this behalf under section 214, if he have [d] used it for [d] any non-agricultural purpose.

The Collector's decision as to the amount of assessment payable for the land unauthorizedly occupied shall be conclusive, and in determining its amount occupation for [e] a portion [e] of a year shall be counted as for a whole year.

The person unauthorizedly occupying any such land may be summarily evicted by the Collector and any crop [f] raised on the land shall be liable to forfeiture, and any building or other construction [f] erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture.

Forfeitures under this section shall be adjudged by the Collector, and any property so for

feited shall be disposed of as the Collector may direct.

[a] As to the local repeal of s. 61, see para. 5 of foot-note [a] on p. I, *supra*.

[b—b] These words were substituted by Bom. IV of 1913, s. 20, for the original words "appropriated to".

[c] Words repealed by Bom. IV of 1913, s. 20, are omitted.

[d—d] These words were substituted by Bom. IV of 1913, s. 20, for the original words "appropriated it to".

[e—e] These words were substituted for the original words by Act XVI of 1895, second Schedule.

[f—f] Words repealed by Bom. VI of 1901, s. 7, are omitted.

SUMMARY. (s. 61).

1 Section 61—	(1) Amendment of	...	G 27
	(2) meaning of	...	N 1
	(3) Retrospective effect	G 11 J 1	
	(4) when—should. not be enforced	...	G 5, 18
2 Costs of measurement &c.	...	...	N 3
3 Crops when forfeited	...	...	N 6
4 easements	...	...	G 12, 13
5 encroachments			
	(1) how to detect	G 15, 20, 21, 23	
	(2) Penalties for	...	G 19, N 4
	(3) Silt deposited on canal-banks	...	G 24
6 encroachments in			
	(1) Alienated villages or lands	G 4, 9, 25	
	(2) municipal limits		
	(a) Roads	...	G 26
	(b) streams	...	G 6, N 5
	(c) Tanks	...	G 6, N 5
	(3) open spaces not being parts of roads	...	G 5

(4) public streets in

(1) Alienated villages ... G 9

(2) Govt. villages ... G 2, 7, 14

NOTES.

N. 1. This section corresponds to Sections 33 and 39 of Bombay Act I of 1865. It has been constructed so as to make penal the provisions and remedies common to the two cases of occupation without permission and occupation of lands set apart for a special purpose. The section provides distinctly for (1) the levy of assessment, (2) fine of five rupees or ten times the assessment, (3) eviction, and (4) forfeiture of crop. The introduction of the penalty of fine up to a fixed amount as an alternative from fine by a multiplied assessment is made to meet cases in which the extent of the unauthorized occupation is trifling, but the occupation itself mischievous, as for instance when a landholder ploughs up and incorporates in his field the strip of land dividing him from his neighbours. (Select Committee's report on the Revenue Code Bill.)

N. 2. Suit by person in possession for declaration of title against Government.—The plaintiff alleged that he purchased certain land in July 1888 from the Patel of the village of S and had been in possession ever since and that his vendor had previously been in possession. He now sued because his possession had been threatened by the orders of Government officials. It was admitted that the plaintiff had been in actual possession since 1888.

The District Judge held that the burden of proof of title to the land lay upon the plaintiff. He was of opinion that he had failed to prove it, and he dismissed the suit.

Held that the plaintiff being in possession (not shown to have wrongfully originated) such possession was good against the whole world except a

person who could show better title, that the burden of proving such title lay upon the defendant, that he failed to prove it, and that therefore the plaintiff was entitled to the declaration sued for. (I. L. R. 25 Bombay 287.)

N 3. The cost of measurement and correction of record in cases of encroachment under Section 61, should be borne invariably by Government. The fines or occupancy prices levied would cover the cost in case encroachment is found to have been really made.

N 4. As regards determining the amount of fine leviable under this section, see table given in Appendix 4.

N 5. Under sec. 50 (2) (b) of the Bombay District Municipal Act 3 of 1901 all public streams and tanks are vested in a Municipality. The words 'public streams' do not include either the banks or the beds of such streams. (*Vide* G 6 under sec. 37.) The words 'public tanks' however include the beds and any adjacent land appertaining to the tanks (G. R. 6111 dated 9 September 1887). Encroachments in the beds or banks of public streams within municipal limits can therefore be dealt with under sec. 61.

N 6. Under sec. 61 the *crops* are liable to forfeiture so long as they are standing on the land and their value cannot be recovered after their removal from the land.

N 7. Open space between two bastions of an old castle-like building presumably belongs to the owner of the building. The Collector, however, can decide each case on its merits under Section 37 and declare whether the such open space forms part of the road or the building.

G 1. The assessment leviable under section 33 of the Survey Act (now section 61 of the Land Revenue Code) is liable to the one anna cess but

not the excess which may be imposed as a fine. (G. R. R. D. No. 1097, dated 1st March 1871).

G 2. As a matter of principle, it is absolutely necessary to repress rigidly the practise of making encroachments on public streets to which many of the people are so much addicted. (G. R. 4456 dated 7th August 1875.)

G 3. Remission of assessment chargeable on lands unauthorizedly occupied.—The Collectors and Assistant and Deputy Collectors, when dealing with cases of unauthorized cultivation under this section, may remit such portion of the assessment chargeable as may appear to them in view of the circumstances to be reasonable and desirable. The power to grant remission hereby conferred is to be exercised only in cases where a strict enforcement of the provisions of this section would seem to be inexpedient. (G. R. No. 1625, dated 30th March 1880.)

G 4. Section 61 not applicable to alienated villages or lands.—Section 61 is not applicable to alienated villages or lands. The Collector cannot therefore take steps under this section in cases of encroachment on Gurcharan (or lands assigned for special purposes) in alienated villages. In such cases the Inamdar's proper remedy is a suit in the Civil Court. (G. R. No. 5205, dated 25th June 1885.)

G 5. The order (G. R. No. 5965, dated 20th August 1886—printed under Section 37) regarding encroachment on public roads is inapplicable to any open space or portion of open ground which cannot be reasonably claimed as forming part of public road. Whether any such piece of ground is a part of public road or not is a question of fact, which must be determined according to the circumstances in each case. If a person has taken possession of land to which he has no right, the law should be enforced against him with the view of ousting him, or if that is found inexpedient, the oc-

Section 61—

1. In G. 6 on page 159 of the Code, (i) *Insert* an asterisk over the words “ section 17 ” in lines 6 and 31 and *insert* the following footnote :—

“ * Now [§]section 50 (2) (b) of Bombay Act III of 1901 and section 63 (2) (b) of Bombay Act XVIII of 1925 ”.

(ii) *Insert* the sign “ † ” over the figure “ 18 ” in line 31 and *insert* the following footnote :—

“ †. Now section 51 of Bombay Act III of 1901 and section 65 of Bombay Act XVIII of 1925 ”.

2. In N. 5 on page 157 of the Code for the words “ 3 of 1901 ” *insert* the following words :—

“ III of 1901 and section 63 (2) (b) of Bombay Act XVIII of 1925 ”,

cupancy should be recognized to be his on his giving usual occupant's *Kabulayat* and paying the usual occupancy price, if any. (G. R. No. 3815, dated 23rd June 1887.)

G 6. Encroachments on tanks in Municipal limits.—The word "tank" is ordinarily applied to basins in the earth constructed or adopted for the storage of water. All public tanks, and also any adjacent land appertaining thereto in Municipal limits are, under Section 17 of Bombay Act VI of 1873, vested in, and belong to, the Municipality. Under this section it is clear that the bed of any such public tank belongs to the Municipality. And when once the soil has so vested there is nothing in the law to make it cease to be Municipal property on its nature being altered and its ceasing to be the bed of a tank. The test is whether the land has, at any time since the Municipal Act VI of 1873, and since the constitution of a Municipality, been a public place for storage of water, if it has, it has vested in the Municipality, and if it was dried up permanently before the contingencies arose, it remains Government property. So long as an old basin known to have been formed or constructed for the storage of water remains capable of holding water and does usually hold it at some period of the year it remains a tank. When the bed of a tank is Municipal property according to this view it is not liable to assessment when cultivated or otherwise used. Section 45 of the Land Revenue Code, no doubt, makes all land liable to land-revenue unless wholly exempted under the provisions of any special contract or any law for the time being in force, but looking to the Municipal Act Sections 17 and 18, of which the latter declares that all rent of Municipal property shall go to the Municipal fund, it must be held that Municipal lands are implied by the intention of the Municipal Act exempted from land-revenue, and must be considered 'alienated' (that is, transferred so far as

the rights of Government to payment of rent or land-revenue are concerned) and therefore are not liable to assessment under Section 52 or to the penalties provided by Section 61 of the Land Revenue Code. The Collector should decide whether the bed of a disused tank belongs to Government. The other party may be left to its own remedy or appeal. G. R. No. 4551, dated 6th June 1885, (*Vide* Order No. 2 under Section 37) does not affect this. Stream means a current of water, and does not include bed, but tank means the basin itself. (G. R. No. 6111, dated 9th September 1887.)

- G 7. Procedure for the summary eviction.—** The procedure to be adopted for the summary eviction of any person liable to be evicted under Section 61 of the Land Revenue Code is clearly stated in Section 202. In cases in which portions of public road have been unauthorizedly occupied, the Collector should, after satisfying himself in each case that an encroachment has really taken place, strictly follow the procedure prescribed in Section 202. In case any building has been erected on land encroached upon, the notice given under Section 202 should contain a specific instruction to remove such building and vacate the land by such date as Collector might think reasonable. (*Vide* Clause 6 of Section 61 and Clause 2 of Section 202.) (G. R. No. 1697, dated 13th March 1888 reaffirmed by G. R. 3534 of 10th May 1895.)

G 8. In Taluka towns Mamlatdar's responsibility.— There has recently come before Government an instance of unauthorized occupation of Government land by the erection of buildings thereupon by a private individual in a town which is the Head-quarters of a Taluka. Such cases are most discreditable to the Mamlatdars under whose personal observation, it may be presumed buildings are erected upon public property. There are Municipalities in taluka Head-quarter towns, and the

Mamlatdar was formerly the chief executive officer of the committee and had the best opportunity of knowing of any encroachments upon public property ; neglect of duty in such cases therefore was the more inexcusable. Under the present system of local Government it is more necessary than formerly that village and taluka officials should feel their responsibility for protection of public property ; and the attention of the Collectors and the Commissioners is therefore especially directed towards seeing that the duty is performed with promptitude and efficiency. (G. R. No. 3789, dated 11th June 1888.)

G 9. Course to be taken by the alience.—The provisions of Section 61 do not apply to alienated lands (see above). Accordingly in a case in which the Inamdar of a village had permitted a man to build over the road passing through the village to the great inconvenience of inhabitants, the Collector declined to interfere on the ground that the village was "alienated." The Commissioner recommended that the view held in G. R. No. 5205, dated 25th June 1885 might be reconsidered with reference to the points—

(1) That the Inamdar in the present instance is not the owner of the soil under the ruling at 6 B. H. C. R. A. C. J. ; and

(2) That Section 37 of the Bombay Land Revenue Code reserves the rights of Government in public roads.

This recommendation was disposed of by G. R. No. 3837, dated 3rd June 1890, by which the view held in the resolution above referred to has been re-affirmed in the following terms :—

"Section 61 applies only to unauthorized occupation of—

(a) any land set apart for any special purpose, and

(b) any unoccupied land which has not been alienated.

"Section 218 of the same Code renders inapplicable to alienated land such provisions of the Code as in terms apply to unalienated lands or the holders thereof.

"It therefore follows that when land has been transferred in so far as the rights of Government to payment of the rent or land-revenue are concerned wholly or partially to the ownership of any person, the Collector cannot interfere to protect the rights of the transferee by evicting the unauthorized occupier summarily under Section 61.

"But the effect of this provision of the law is only to exclude the interference of the Collector in cases where the rights encroached upon have been transferred to an individual, who may enforce them, or make other arrangements with the trespasser.

"The alienee must, if he wishes to enforce those rights, proceed by civil suit, for even under Section 88 no power can be conferred upon him to exercise the powers of a Collector under Section 61, though Section 88 enables powers under Sections 65 and 66 to be conferred by commission, *expressio unius est exclusio alterius*.

"The power of summary eviction conferred by Section 61 on the Collector extends not only to unalienated lands, but also to lands set apart for any special purpose, whether it be alienated or not. That is to say, the Collector cannot interfere summarily to protect the interests of an individual; but he can do so in the interests of the public to preserve from unauthorized occupation land appropriated to special purposes.

"Land can only be 'set apart' under the Code for certain purposes in unalienated villages, when it is the property of Government and unoccupied (Section 38.)

"The wording of Section 61 'set apart for any special purpose,' is not limited in its application to assignments under the Code for the special purposes enumerated in Section 38, but would give the Collector power to protect against unauthorized occupation of any land lawfully set apart whether under the Code or not, for any special purpose.

"Land which, prior to the alienation of a village, had been dedicated by the State as high road would certainly not pass to the alienee by a subsequent grant even of the soil of the village, but the dedication would survive for the benefit of the public. Unauthorized occupation, even by the alienee of land so set apart, could be dealt with by the Collector under Section 61, notwithstanding that the village including all the lands thereof were alienated.

"But whether or no an encroachment on a road in existence prior to the alienation could be dealt with by the Collector under Section 61 of the Bombay Land Revenue Code, there can be not the slightest room for doubt that it could be dealt with under Section 133, Criminal Procedure Code, by the District, Sub-Divisional or other duly empowered Magistrate, if it amount to an unlawful obstruction of a way, which is, or may be, lawfully used by the public.

"A public road forming part of the general system of communication is a matter of imperial interest, and is therefore protected by imperial legislation, and no one has a right to obstruct any part of that system. But, before taking any magisterial action under the Criminal Procedure Code, it would be necessary to ascertain that the road in question was really a public road and not merely a private way, or a cart track, the use of which might be permissive only, or limited only to a section of the public resident in the neighbourhood.

"If the road is unquestionably a public road, that is dedicated to the use of the public the date of its

dedication would, for the purposes of Section 133, Criminal Procedure Code, be immaterial.

“ If it is a road which pre-existed the grant of the village, the Collector could take action under Section 61 to protect it from unauthorized occupation as land set apart.

“ But if it is only a bye-way used for village traffic alone and only since the alienation of the village, then action could not be taken under Section 133 of the Criminal Procedure Code, and certainly not under Section 61 of the Bombay Land Revenue Code.

“ The mere fact that the Inamdar was not owner of the soil of the village would not preclude him, or any one with his permission from occupying, without waiting for authority under Section 60, any land in the village on which the public had not a superior claim for special purposes.” (G. R. No. 3837, dated 3rd June 1890.)

G. 10. Section 61 has no retrospective effect, *i.e.*, the provision cannot be enforced in respect of anything done before the Code became law on the 17th July 1879.

But when an unauthorized occupation of land, which commenced before 17th July 1879, has been since continued, the Collector may, unless the occupier has in the meantime acquired a complete prescriptive title to the land,—

- (a) require payment of assessment under paragraphs 2 and 3 of Section 61 for the whole period of occupation, except for any time prior to the 17th July 1879;
- (b) summarily evict the person unauthorizedly occupying;
- (c) forfeit any crop raised on the land subsequently to the 17th July 1879;
- (d) require the removal of any building or other construction, which the person unautho-

rizedly occupying the land may have erected thereon ;

- (e) failing obedience to the requisition under (d), forfeit the building, or construction, whether it was erected before or since the 17th July 1879.

These orders supersede those in G. R. No. 3274, dated 25th June 1880. (G. R. No. 6202, dated 1st September 1890.)

G. II. Unauthorized Occupation creating a prescriptive title.—The questions as to what period of unauthorized occupation of Government land should be considered as creating a prescriptive title to the land, and whether when such a title is established the unauthorized occupier is to be allowed to continue in the possession of the land rent free, have been decided by the following orders:—

“ ‘ Sections 35 and 36 of Regulation XVII of 1827 I. L. R. IX. show that the Legislature accepted the principle of Bombay 227. prescription creating a right of property or of fiscal exemption against the State as against the individual,’ and article 149 of Schedule II. of Act XV. of 1879 bars a suit by the Secretary of State, in Council by the lapse of sixty years from the date when the period of limitation would begin to run under that Act against a like suit by a private person, and, under Section 28 at the determination of the period limited to any person for instituting a suit for possession of any property his right to such property is extinguished.

“ The right of a private person to sue for possession of immoveable property on any interest would be barred by the lapse of twelve years from the date when the possession of the defendant became adverse to him. L. L. R. IX. Madras 183 See also Savigny on possession. Sir E. Perry's Translation, p. 275.

“ The question at what precise moment possession has become adverse must, of course, depend on the circumstances of each particular case. ‘ The enjoyment necessary to create a title by prescrip-

tion must not be a mere succession of independent trespassers ; it must be, if not continuous, at least of such a character that an intention to assert a right as owner may be inferred from it.'

"Sixty years of continuous possession in the open assertion of an adverse title would, therefore, be necessary to bar the Secretary of State in Council from recovery of possession." (G. Rs. Nos. 728, dated 28th January 1891, and 3274, dated 12th May 1891.)

G. 12. Section 15 of the Easements Act (VIII of 1891), renders 60 years of peaceable and open enjoyment in the assertion of a title to an easement as such and as of right sufficient for the acquisition of a right against Government. No grant of an easement in respect of Government land should be made by any officer except (1) with the express sanction of Government or (2) under some rule or order of Government at the time in force clearly authorizing the grant. Strict vigilance should be exercised by all revenue officers and enjoined by the superior officers upon their subordinates in order to interrupt the growth of any unwarrantable claim to an easement upon or in respect of Government land. (G. R. R. D. No. 3864, dated 6th June 1891.)

G. 13. The commonest easements are :—

- (1) a right of way through Government land
- (2) a right to take water from a well, nala or spring in Government land
- (3) a right to take cattle to water at a well or tank or water-channel in Government land
- (4) a right to conduct water to one's own field through Government land
- (5) a right to graze cattle in Government land
- (6) a right to cut wood or gather rab on Government land

- (7) a right to take earth, stones, muram, &c., from Government land

The interests of Government would suffer if local officers allowed the practices described above to grow by prescription into absolute rights without taking proper steps to prevent them.

Peaceable enjoyment without interruption for sixty years may convert such practices into rights as against Government. (G. R. 1376 dated 24th February 1892.)

G 14. The orders in G. R. No. 1697, dated 13th March 1888, supersede those in G. R. No. 4344, dated 18th June 1886. (G. R. R. D. 3534 dated 10th May 1894.)

G 15. Measures for detecting encroachment.†
—Encroachment on Government land within the village site can be prevented only by constant supervision and control of village officers without whose cognizance such encroachments cannot occur. (G. R. R. D. No. 954 dated 31st January 1896.)

G 16. *Vide* G. 16 under Section 37. (G. R. 1873 dated 27th February 1896.)

G. 17. *Vide* G. 17 under Section 37. (G. R. 9661 dated 1st December 1896.)

G. 18. Persons encroaching before location of boundaries should not be evicted—Although it cannot be admitted that the location of a boundary under Chapter IX would necessarily exempt a person from penalty of unauthorized occupation of land within it, if encroachment before the location could be distinctly proved it would hardly be ever expedient to apply sec. 61 to land which had been included in an occupied number at an original or revision survey and it would be especially inexpedient where the survey took place many years ago and the land alleged to be encroached upon has been in occupation ever since. (G. R. No. 3630, dated 13th May 1897.)

G. 19. The penalties for encroachment should be promptly enforced.—The penalty for encroachment on Government land, including roads, is prescribed under Section 61, *viz.*, Rs. 5 or a sum equal to ten times the assessment of the area encroached upon if such a sum be in excess of Rs. 5, summary eviction and forfeiture of crops raised. These penalties, if promptly and fully enforced, will prove to be sufficiently deterrent. (G. R. No. 44 dated 4th January 1900.)

G. 20. Measures for detecting encroachments.—The attention of all Revenue Officers is called to G. R. No. 9661, dated 1st December 1896 (given under Section 37) and to the necessity for the care and diligence in the collection of all available evidence, both oral or documentary, of Government title.

(2) In order to afford some check on the numerous encroachments which at present escape undetected, as soon as the Accountant of any village has learnt surveying, the first opportunity should be taken to execute an accurate survey of the village site. When surveying village sites the necessity of allowing cultivators plenty of space for stacking grass, tethering cattle and similar purposes should be carefully borne in mind.

(3) The proper procedure will be to map out the village site accurately (beginning so far as possible in the more important villages.) The map should show all plots actually in the possession of private individuals, and all persons claiming sites should be called on to produce evidence of title. All claims which Government cannot be certain of disproving should so far as possible be compromised by leasing the land for a nominal occupancy price and reasonable ground rent.

(4) All leases which may be effected or grants of permission to occupy which may be made in pursuance of these orders should be carefully noted

in the record. (G. R. No. 4054, dated 13th June 1901.)

G. 21. Government are aware that inquiry and survey can only proceed gradually, but it is desirable that a beginning should be made in places where trained village Accountants are available and the pressure of work is not unduly heavy. It is not the intention of Government that their claims should be asserted over any land which is or has recently been built over, but it will be of considerable advantage to obtain an up-to-date record of all permissive uses in a village and of the actual area at present occupied by buildings or clearly shown by the presence of old foundations to have been so occupied in the past.

2. Apprehensions of loss to Government interests do not, in the opinion of Government, outweigh the advantages anticipated, and Collectors should carry out the inquiries in a liberal spirit of compromise. It is most important for administration purposes that there should be a record of rights in open lands in or near village sites and the absence of one has led to very unsatisfactory results. (G. R. No. 1663, dated 12th March 1902.)

G. 22. The Collectors have full discretion to remit fine under this section. (Entry 21 of G. R. No. 4347, dated 25th June 1902.)

G. 23. The open spaces, principal roads and streets, where encroachment is likely to occur, should be surveyed when opportunity occurs in the principal villages in any taluka, the Village Accountants of which have all received survey training. An absolutely accurate plan of the whole village is not required. For this purpose the theodolite and prismatic compass would not be indispensable. (G. R. R. D. No. 4964, dated 21st May 1906.)

G. 24. Deposit of silt on Canal banks in Sind—no encroachment.—Silt deposited on canal banks does not amount to occupying land within the con-

temptation of Section 61. The depositor renders himself liable to damages for trespass on land or to prosecution under Section 61 of Bombay Irrigation Act or Section 425, Indian Penal Code. (G. R. R. D. No. 8539 dated 4th September 1906.)

G. 25. Sec. 61 does not apply to alienated villages or lands. (G. R. No. 10386 dated 16th November 1910.)

G. 26. Sec. 61 does not apply to roads within municipal limits which are made over to a municipality. (G. R. No. 447 dated 17th January 1912.)

G. 27. Recovery of the cost of removing a building or other encroachment on land unauthorizedly occupied from the trespasser.

The following amendment to Section 61 of the Bombay Land Revenue Code, with the note on the clause, prepared by the Remembrancer of Legal Affairs, is approved :—

Amendment
of Sec. 61 of
Bom. V of
1879.

“ In Sec. 61 of the Bombay Land Revenue Code,
1879—

(a) after the word ‘forfeiture,’ where it occurs for the second time in the last paragraph but one, the following words shall be inserted :—

‘ or to summary removal ’; (Cf. Bom. II of 1876 S. 26).

(b) the following words shall be added to the last paragraph of the section :—

‘ and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue. ’ ”

Note on the clause.

There is no provision in the Bombay Land Revenue Code, 1879, under which the cost of removing a building or other encroachment on land unauthorizedly occupied can be recovered from the trespasser. This clause inserts the required provision

which has been based on the similar authority contained in the Bombay City Land Revenue Act, 1876, Section 76.

The amendment should be included in the next Repealing and Amendment Bill. (G. O. No. 10382, R. D., dated 30th October 1916.)

J. 1. The use of the word "shall" in the first clause of Section 61 does not restrict the application of this section to cases of unauthorized occupation subsequent to the Act of 1879 coming into force. Although the assessment may not be leviable for a period anterior to the date of the enactment an occupation is a continuous act. (*Pranla vs. the Secretary of State.* P. J. 366 of 1897).

J. 2. Under section 37 of the Bombay Land Revenue Code all public roads are the property of Government and must be taken to be in the possession of the local Government officers on behalf of Government. Hence a person who encroaches on such a road is guilty of criminal trespass, if the encroachment is made with such intent as is contemplated in section 441 of the Indian Penal Code.

Queen-Empress v. Fakirgavda.

C. R. 49 of 1888, p. 393.

J. 3. The complainant built a wall obstructing a public way. Immediately after this, the accused, who were members of the public, in the bona fide exercise of their right of way, pulled down the wall : Held, that the accused were not guilty either of rioting or of mischief or of criminal trespass. (Sections, 147, 426, and 447 of the I. P. Code.)

I. L. R. 39 Madras, p. 57.

J. 4. On the 2nd May 1912 the plaintiff gave notice to Government under Section 80 of the Civil Procedure Code (Act V of 1908) of a suit which he intended to file for a declaration of ownership of certain property. Shortly afterwards, the Mamlatdar threatened to demolish the property which was the subject matter of the notice. The plaintiff

thereupon filed up the present suit against Government on the 19th June 1912. The defendant contended that the suit was bad under Sec. 80 as having been instituted within two months of the date of the notice. Held, that the suit was not bad under Sec. 80, inasmuch as the defendant's agent had during the currency of the notice threatened to demolish the property in dispute.

The Secretary of State for India in Council
V.

Gulam Rasul Gyasudin Kuwari.
I. L. R. 40 Bombay, p. 392.

Unoccupied
land may be
granted on
conditions.

[a] **62.** It shall be lawful for the Collector subject to such rules as may from time to time be made by the Governor in Council in this behalf, to require the payment of a price for unalienated land or to sell the same by auction and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under section 60. The price (if any) paid for such land shall include the price of the Government right to all trees not specially reserved under the provisions of section 40, and shall be recoverable as an arrear of land-revenue.

[a] As to the local repeal of ss. 62 and 63, see paragraph 5 of foot-note [a] on p. I, *supra*.

Secs. 62 and 63 were substituted by Bom. IV of 1913, ss. 21 and 22, respectively, for the original sections.

N 1. For memo. of conditions to be imposed in respect of sale by auction of the occupancy right of Government lands, see Appendix 5.

N 2. For conditions regulating the cutting of trees for tahal, see Appendix 6 to the Code.

N 3. *Vide* J I under s. 211.

G I. Grant of land to Kolis and other wild tribes.—The concession (of giving land without

payment of occupancy price) given by G. R. R. D. No. 1044, dated 19th February 1875, should be strictly confined to Kolis and other wild tribes. In each case the condition that the grantee shall not transfer it in any way to another person should be imposed. (G. R. R. D. No. 6210, dated 22nd August 1883).

G 2. Mention of non-transferable tenure in the Administration report.—The area of land given out in each district during a revenue year on each non-transferable tenure, should be mentioned in the Administration reports. (G. R. R. D. No. 1607, dated 12th March 1907.)

G 3. Rewards to meritorious Government servants.—Where it is desired to reward a meritorious Government servant, land may be given on the restricted tenure, provided the grantee specially desires it on the ground that it will preserve the land in his family. (G. R. No. 8526 dated 21st August 1908.)

G 4. Building sites.—There is no objection to grant building sites on restricted tenure in suitable cases. (G. R. No. 2682, dated 15th March 1909.)

G 5. Lease or mortgage of lands on the unalienable tenure.—On the question of the grant of increased facilities to holders of Land on the unalienated tenure to lease or mortgage, Government have directed that it is desirable to maintain the elasticity which the present practice allows, and are of opinion that until the burden of dealing with applications for alienation is shown to be excessive, power to grant permission should remain entirely in the hands of the collector and such sub-divisional officers as he may think fit to exercise it—rarely, if ever should the authority be delegated to mamlatdars.

Where non-alienated tenure has been extended to the persons of the more intelligent classes for

whom any restriction on alienation is unnecessary the restriction may be removed on the application of the individuals concerned, and on payment of the difference, if any, between the price actually paid for occupancy on the non-alienable tenure and the amount that could, in the collector's opinion, be a reasonable price for occupancy on the ordinary tenure. (G. R. No. 8708, dated 28th September 1910.)

G 6. Grant of lands to criminal tribes.—Revised forms of leases for the grant of lands for agricultural purposes and for building sites to certain criminal tribes are given in Appendix 6. (G. O R. D. No. 12176, dated 11th December 1916.)

G 7. Waste lands.—Conditions to be imposed¹ in making grants of waste lands to deserving military men.

G. R. R. D. 14850, dated 18th December 1917.

„ 12029, dated 6th October 1917.

„ 2086, dated 1st March 1911.

„ 1963, dated 24th February 1911.

G 8. Waste lands may be given in cases of want or to encourage local recruitment. (G.R.R.D. 14425, dated 29th November 1917.)

Grant of
alluvial
land
vesting in
Govern-
ment.

[^a] **63.** When it appears to the Collector that any alluvial land, which vests under any law for the time being in force in Government, may with due regard to the interests of the public revenue be disposed of, he shall offer the same to the occupant (if any) of the bank or shore on which such alluvial land has formed.

The price of the land so offered shall not exceed three times the annual assessment thereof.

If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictions as to the price to be asked.

Section 62—

For “Appendix 6” in G. 6 read “Appendix VII” and for “Government Order, Revenue Department, No. 12176, dated 11th December 1916.” read “Government Resolution, Revenue Department, No. 4702/24, dated 15th February 1932.”

Section 62—

Insert G. 18 :—

“ Land granted on impartible tenure for agricultural purposes may subsequently be converted to non-agricultural use. When such conversion is allowed the portion used non-agriculturally should be formed into a separate survey number and freed from the condition of impartibility.”

(G.R. No. 4702/24-III, dated 19-9-1931.)

Section 62—

Insert G. 19 :—

“ In the case of Government waste land situated within 35 feet of a transmission line owned and operated by a Railway administration prior intimation of any proposal to dispose of the land should be given to that administration so as to allow it an opportunity to acquire the land if it so desires. ”

(G.R. No. 1996/28, dated 18-4-1929.)

For the purposes of this section, notwithstanding anything contained in section 3, if the bank or shore has been mortgaged with possession, the mortgagor shall be deemed to be the occupant thereof.

[a] As to the local repeal of ss. 62 and 63, see para. 5 of footnote [a] on p. 1, *supra*.

Ss. 62 and 63 were substituted by Bom. IV of 1913, ss. 21 and 22, respectively, for the original sections.

SUMMARY (SEC. 63.)

1 Section 63 (1) meaning of	...	...	N	1
(2) not applicable to				
(a) Abandoned riverbed	...		N	3
(b) Alluvial land artificially formed	...	...	N 4, G	1, 4
(c) Alluvial land formed on alienated land	...	...	N	2
(3) Alluvial land bounded on one side by water and on the other side by a foot- path	...	...	N	6
(4) Beds of rivers or streams	...		N	5
2 Irrigation Department		when—to take revenue from allu- vial land	...	G 1, 4
3 Sale	...	—of alluvial land to a stranger	...	G 3
4 Suit	...	notice of—against Government	...	G 2

NOTES.

N 1.—This section provides for the disposal of the occupancy of such alluvial or water-forsaken-lands as under the provisions of the Code (Sec-

tion 37) vests in Government. The object of the Section is to secure to the neighbouring landholder, in consideration of the river frontage he would otherwise lose, right to purchase the occupancy of the new land at a price not exceeding three times its annual assessment. (Select Committee's report on the Revenue Code Bill.)

N 2.—This and the following sections refer to alluvion formed on Government land. Alluvial lands formed on alienated lands are dealt with in Section 46.

N 3.—Alluvial land distinguished from abandoned river bed.—Alluvial land is bounded on *one* side by the water of a river or stream while an *abandoned river bed* is bounded on *both* sides by other lands.

N 4.—Artificially formed alluvial land—land artificially formed by obstructing flow of water is not alluvial land which has (naturally) 'formed' under this section.

N 5. Beds of rivers or streams—such beds occasionally under water in the rains should not be treated as alluvial land or should not be permanently disposed of.

N 6. Foot path.—A foot path adjoining alluvial land is sufficient to extinguish riparian rights.

GOVERNMENT ORDERS.

G 1. Department to which revenue from alluvial land should be taken.—Certain alluvial lands were formed by increased storage of water caused by a dam constructed by the Irrigation Department. The revenue from such lands was ordered to be credited to the Irrigation Department. (G. R. R. D. No. 5770, dated 28th October 1879.)

G 2. Notice in a newspaper to Collector under this Section not sufficient.—D gave a notice to the Collector in a newspaper that within two

No. 33

Section 63—

Insert Cl. 7 —

“ It is the occupant [as defined in section 3 (16)] and not the tenant who is entitled to alluvial land under section 63. A permanent tenant is merely a tenant and not an occupant (cf. Kondi vs. Vithal Rao, 28, Bom.L.R. 424).”

(G.R. No. 8268/28, dated 25-2-1932.)

months from its date the occupancy of the number named (to which Section 63 was applicable) should be given to him on his paying the occupancy price, otherwise he would institute a civil suit. The question was referred to the Remembrancer of Legal Affairs, who gave his opinion as follows:—

“It is not generally desirable that the Collector should accept as sufficient, for the purposes of the Civil Procedure Code, a notice published in a newspaper.” (G. R. No. 4803, dated 8th June, 1892.)

G 3. The sale of an alluvial land to a stranger set aside.—G, unauthorizedly occupied alluvial land formed adjacent to his field, and enclosed it, by an embankment. G. offered not only three times but twenty times the assessment, but the land was put to auction and sold to S.

Government cancelled the sale as illegal. S was evicted, and the occupancy price, with reasonable compensation for loss, actual or prospective, which the dispossession did cause, was ordered to be paid. G. was ordered to be put in possession on payment of a sum specified. (G. R. No. 321, dated 19th January, 1903.)

G 4. Sections 63 and 64 and the rules regarding alluvial land do not apply to such land formed by the silting up of a nala near a Public Works Department dam. The disposal of the land rests with the Collector. The proceeds may be credited to Irrigation Department. (G. R. R. D. No. 6201, dated 31st July 1905).

[^a] **64.** When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use [^b] thereof unless or until the area of the same exceeds [^c] one acre [^b]. When the area of the alluvial land exceeds the said extent, it

Temporary right to alluvial lands of small extent.

shall be at the disposal of the Collector, subject to the provisions of the last preceding section.[^b]

[a] As to the local repeal of ss. 64 and 65, see para. 5 of footnote [a] on p. I, *supra*.

[b] Words and paragraph repealed by Bom. IV of 1913, s. 23, are omitted.

[c] This word was substituted by Bom. IV of 1913, s. 23, for the original words "half an".

J. I. Alluvial land:—The bed of a public navigable river is the property of the Government, though the banks may be the subject of private ownership. If there be slow accretion to the land on either side, due, for instance, to the gradual accumulation of silt, this forms part of the estate of the riparian owner to whose bank the accretion has been made: Bengal Regulation II of 1825.

If private property be submerged and subsequently again left bare by the water, it belongs to the original owner.

20 Bombay Law Reporter. page 49.

Haradas Acharjya Chowdhuri

Vs.

Secretary of State for India in Council.

Uses to which occupant of land for purposes of agriculture may put his land.

[^a] **65.** An occupant of land [^d] assessed or held for the purpose of agriculture [^d] is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient [^e] use for the purpose aforesaid [^e].

Procedure if occupant wishes to apply "his land" to any other purpose.

But, if any occupant [^f] wishes to use his holding or any part thereof for any other purpose [^f] the Collector's permission shall in the first place be applied for by the [^g] occupant.

[^a] The Collector, on receipt of such application,

- (a) shall send to the applicant a written acknowledgment of its receipt, and
- (b) may, after due enquiry, either grant or refuse the permission applied for :

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application [a].

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the [b] occupant.

When any such land is thus [c] permitted to be used for any purpose unconnected with agriculture [c] it shall be lawful for the Collector, subject to the general orders of Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

(a) Vide (a) under s. 64.

[b-b] These words were substituted by Bom. IV of 1913, s. 24 (a) for the original words "appropriated for the purposes of agriculture".

[c-c] These words were substituted by Bom. IV of 1913, s. 24 (a) for the original words "occupation for the purposes aforesaid."

Fine to be levied for such use in addition to special assessment.

[d-d] These words were substituted by Bom. IV of 1913 s. 24 (a) for the original words "wishes to appropriate his holding or any part thereof to any other purpose."

[e] The word "registered" was repealed by Bom. IV of 1913, s. 24 (b).

[f-f] This was substituted by Bom. I of 1910, Schedule I, Pt. II, Serial No. 4, for the original paragraph.

[g] The word "Registered" was repealed by Bom. IV of 1913, s. 24 (b).

[h-h] These words were substituted by Bom. IV of 1913, section 24 (a) for the original words "appropriated to any purpose unconnected with agriculture."

SUMMARY (Section 65.)

- 1 Section 65 (1)—Applicable to
 Surveyed Inam
 villages ... G 13
- (2)—Connected with
 s. 48. ... NI
- (3)—Explained ... G 6,8,10,11
- (4)—Inconsistent with
 s. 134 ... N 4
- (5)—Not applicable
 to (a) Inam lands. G 1,2
 (b) lands not
 used for
 agriculture. J 1
- 2 Agricultural purpose—manual ... G 9
- 3 Delegation—of powers ... G 14
- 4 Earth, stone &c —removal of ... G 3, 16
- 5 Farm buildings—defined ... N 3, G 4
- 6 Fines—abolition of ... N2, G15
- 7 Lands rent free but not Inam ... G 5
- 8 Municipality—no concession to ... G 7
- 9 Quarries—in occupied lands ... G 16

NOTES.

N. 1 As regards new assessment leviable under section 48 referred to in this section, *Vide* notes under s. 48 and the rules thereunder.

N. 2. Fines under section 65 are now abolished (*Vide* G 15.)

N. 3. Buildings erected for the storage of agricultural implements or for sheltering cattle used in the cultivation of the land as well as houses occupied by occupants who themselves cultivate the survey number on which they stand, or by tenants who do the same, or by servants of such occupants or tenants who are actually employed in the cultivation of the same land are held to be farm buildings. (Bombay Govt. Gazette Part VII for 1911, page 195)

N. 4. It will be seen from G 1 and G 2 under this section that section 65 is inapplicable to Inam lands. It appears that this section is inconsistent with section 134 as it now stands.

G. 1. Section 65 not applicable to alienated lands.—Where M asked for permission to convert a portion of his *patilki inam* into building sites, the permission was refused, as only occupants as defined by Section 3, clause 16, are entitled to ask and obtain permission under Section 65.

The Collector then proposed to convert a portion of that land into *gaonthan* and another piece of land to be exchanged for *patilki inam*.

The proposal was sanctioned. (G. R. No. 4148, dated 23rd May 1885.)

G. 2. B applied for permission to build a factory on a Deshpande land belonging to N. The case being referred to the Legal Remembrancer his report was approved, which was as follows:

"1. Section 65 is inapplicable to the land in question.

"2. The alienation of land forming part of a District Hereditary Officer's *watan* is illegal under Section 5 of Bombay Act III. of 1874 as amended by Section 1 of Bombay Act V. of 1886, without the sanction of Government. But without knowing what is the nature of the title claimed by N in the piece of land which B wishes to acquire, it is not possible to decide whether that section can be held to apply to it.

"3. The Collector apparently need not concern himself in the matter, unless action is asked for under some specific enactment. The sanction of Government does not appear to be necessary merely to permit B to build a factory." (G. R. No. 3181, dated 23rd May 1887.)

G 3. Removal of earth, stone, etc., by Occupant.—Occupants of lands assessed for purposes of agriculture are liable to payment of fine under the Land Revenue Code rules for the removal by them, of earth, stone, etc., from their lands for purposes of trade.

Such cases should be governed by paragraphs 2 and 3 of Section 65 of the Code. Permission of the Collector should be applied for and may be granted. * * * Where an occupant takes action without obtaining the Collector's permission in the first instance, recourse might be had to Section 66 of the Code. (G. R. No. 6883, dated 16th October 1888.)

G 4. Houses in cultivated lands in Kanara.—Owing to the absence of village sites throughout the greater part of Kanara, the dwelling houses of the cultivators—whether occupants or tenants—are usually built on lands appropriated for purposes of agriculture. Many of these houses, partly for climatic reasons and partly because the cultivators who inhabit them are of a superior class, are more substantial and commodious structures than are generally required by cultivators in other parts of the Presidency. Such houses may fairly be con-

sidered to be farm buildings within the meaning of Section 65, Land Revenue Code, so long as they are occupied and *bonâ fide* used as farm-buildings by occupants, or tenants, of the survey numbers on which they stand, or by servants of such occupants, or tenants, employed in the cultivation of the land aforesaid. (G. R. No. 1637, dated 3rd March 1891.)

G 5. Fine for non-agricultural appropriation of rent free land.—The opinion expressed by the Commissioner, N. D., in his following memorandum No. 1631 dated 12th May 1892, was concurred in by Government :—

"I have the honour to submit, for the orders of Government, the following case regarding the levy of fine from one I. J. on a portion of land built upon by him after its purchase from the original holder, a Sadhu, who was allowed to enjoy it rent-free as kacha at the time of the Survey.

2. The land built upon measures 7 gunthas and forms part of 20 gunthas of land standing in the name of Sadhu J. in Survey No. 71, assessed at Rs. 4-8-0, including water rate, in Navagam, an uninhabited village in the Chorasi Taluka of the Surat District. On the above 7 gunthas of land five sheds have been built, for which the purchaser receives a rental of annas 12 per shed. There is no village site in the village, and the Survey No. being less than an acre in extent, and having on it a *math* and temple, was allowed to be enjoyed free of assessment by the Sadhu, who is entered in the Kaim Kharda as the holder of the land.
3. The Sadhu, having held the land on the ordinary survey tenure, had full occupancy rights over it, and he could, therefore, sell it to any one he pleased. It appears to me, however, that though the land was held

rent-free, it was land assessed for agriculture purposes. It was not alienated land, nor land set apart for a special purpose, *e. g.*, for temple or *math*, and I am of opinion that Section 65 of the Land Revenue Code is applicable to it, and that the occupant can be called on to pay a fine for using the land for a non-agricultural purpose. (G. R. No. 4583, dated 30th May 1892.)

G 6. Permission must be express and not implied.—The following opinion was concurred in by Government.—

"Section 65 of the land Revenue Code confers on occupants, who have applied to the Collector for permission to use land for certain purposes the privilege of acting as if the application had been granted within three months after acknowledgment of its receipt, if no answer to that application has been received by the applicant.

Maxwell on interpretation of Statute 453, *et seq.* "When a Statute confers a right, privilege or immunity, the regulations, forms or conditions which it prescribes for its acquisition are imperative in the sense that non-observance of any of them is fatal. The strictest compliance with the conditions prescribed is required.

Nosworthy
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"Tacit or implied permission could not be deemed to have been granted therefore, if the applicant had received any answer within the three months. If express permission were granted there would, of course, be no necessity for implication.

"Section 65 does not require the Collector to grant the application within any stated period, but only limits his power to refuse in case he has given no answer within the three months, when he shall be deemed to have granted the application.

"It is perfectly open to him to refuse before that period expires, and if he sees reason, on further information afterwards received, to grant

permission either on the same or on another application.

“An answer postponing decision on the application could neither be deemed to be ‘no answer’ at all, nor could it be deemed to grant it. It would be an answer refusing permission at least *in present* but there is nothing in the Act to prevent the Collector subsequently giving the permission.” (G. R. No. 5893, dated 20th July 1892.)

G 7. No concession to a Municipality.—A municipality is not entitled to any concession as regards fine and altered assessment when they acquire agricultural land for non-agricultural purposes, in cases in which such acquisition is remunerative. (G. R. No. 8633, dated 3rd November 1892.)

G 8. The Permission cannot be conditional.—It is not open to the Collector to attach conditions to the permission under Section 65 and to cancel the permission or hold it to be void if the conditions are not fulfilled. He can either refuse or grant the permission. (G. R. No. 127, dated 6th January 1898.)

G 9. What constitutes appropriation.—The sub-letting of land for storage of manure is an agricultural purpose. (G. R. No. 7702, dated 30th October 1899.)

G 10. Obligation of the Collector to acknowledge applications for permission.—Appeal No. 464 of 1898, Valav Purushottam Ghelji *vs.* the Secretary of State, has rendered it impossible, that any person should defeat the clear intention of the legislature, that, without the express permission of the Collector, no occupant should appropriate his holding to non-agricultural purposes. It is, however, none the less incumbent on the Collector to fulfil punctually his statutory obligation to furnish immediately to applicants for such permission an acknowledgment of their applications. Any failure so to do may involve Government in trouble-

some and expensive litigation. (G. R. No. 8053, dated 11th November 1899.)

G 11. The remission of premium and the remission or reduction of the enhanced assessment as an act of grace in special cases require the sanction of Government. (G. R. R. D. No. 476, dated 24th January 1903.)

G 12. A factory was built on certain land (without permission) in 1870. Part of the compound was used for stacking cotton in the fair season and grass grown on the same piece in the rains was sold by the occupant.

It was ordered that 30 times the assessment of 1865 can be levied.

2. As to the question whether 30 times the assessment is to be levied only on the area built over and 5 times the assessment on the rest, the rules at the time of appropriation were ordered to be followed and attention was called to the general principles laid down in G. R. No. 6364, dated 12th September 1903.

3. Even if an appropriation to non-agricultural purposes took place many years ago, the present assessment on the lands can be altered now and Government will sanction assessments in all similar cases to the extent of 10 times on lands actually built and two times on compounds. (G. R. R. D. No. 1, dated 4th January 1904.)

G. 13. Surveyed alienated villages.

1. When land assessed for purposes of agriculture only is subsequently appropriated to any purpose unconnected with agriculture, the assessment upon the land so appropriated shall, unless otherwise directed by Government, be altered in accordance with the provisions of the second paragraph of section 48 of the Bombay Land-Revenue Code, 1879, and fixed and revised by the Collector subject to the rules contained in rule 56 and subject to rule 57 of the Land-Revenue Code Rules :

Provided that the powers of the Collector under rules 56 and 57 of the said rules other than the power of estimating the situation value and fixing standard rates of assessment shall be exercised by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under sections 65 or 66 and of the said Code upon such holder or holders under section 88 (d) of the said Code.

“ Provided also that in any case where rule III under rule 56 of the said rules is applicable, the holder or holders of an unalienated village, to whom such a commission has been granted, may for the purposes of the said rule enter into a written agreement in such terms as may be approved by the Collector with a holder of any of the land specified in such commission, and an agreement with Government under Section 67 shall not be necessary.”

2. For the purposes of determining the amounts of the fines leviable under section 66 of the Bombay Land-Revenue Code, 1879, rules 71, 72, 73, 74 and 75 of the land-Revenue Code Rules shall be applied :

Provided that the powers of the Collector under section 65 or 66 respectively of the said Code shall be exercised in accordance with the provisions of rules 71, 72 except the proviso, 73, 74 and 75 of the said rules by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under sections 65 or 66 respectively of the said Code upon such holder or holders under section 88 (d) of the said Code.

3. When the Collector receives an application under section 65 of the said Code for permission to use for any other purpose land assessed for purposes of agriculture only, he shall forthwith forward to the holder or holders of the alienated village in which the land is situated a copy of the

application and shall as soon as possible thereafter also forward to such holder or holders a letter showing the altered assessment leviable upon use of the land to such other purpose and requesting such holder or holders to intimate within one month of the date of the letter whether the application should be granted or refused. If such holder or holders intimate that the application should be granted it shall be granted accordingly, but if such holder or any of such holders intimate that the application should be refused or do not make any intimation within the time specified the application shall be refused :

Provided that no such application shall be granted or refused by the Collector in respect of land specified in a commission conferring the powers of a Collector under section 65 of the said Code upon such holder or holders under section 88 (d) of the said Code, but shall be forthwith forwarded for determination by such holder or holders and that any such application in respect of any such land may be made to and determined by such holder or holders direct.

4. When the Collector receives information that the holder of land assessed to purposes of agriculture only has rendered himself liable to any of the penalties specified in section 66 of the said Code, the Collector shall address to the holder or holders of the alienated village a letter communicating the information and the liabilities of the holder of the said land and showing the altered assessment or fine or both leviable and requesting the holder or holders of the alienated village to intimate within such time as the Collector considers reasonable whether the liabilities should or should not be enforced. If such holder or holders intimate that the liabilities should be enforced they shall be enforced accordingly, but if such holder or any of such holders intimate that the liabilities should not be enforced or do not make any intimation within

the time specified or within such further time as may specially be granted, they shall not be enforced.

Provided that the Collector shall not pass any such orders in respect of land specified in a commission conferring the powers of a Collector under section 66 of the said Code upon the holder or holders of the alienated village under section 88 (d) of the said Code but shall forthwith communicate the information for the orders of such holder or holders of the alienated village and that any such information may be received and acted upon by such holder or holders of the alienated village direct.

5. The Collector or the holder or holders of the alienated village, as the case may be, shall communicate any orders passed by him or them under these rules to the Mamlatdár of the taluka in which the alienated village is situated and the Mamlatdar shall communicate such orders to the applicant or holder of the land concerned and shall direct the village officers to levy any altered assessment or fine so ordered and such altered assessment or fine shall be levied in the same manner as other land-revenue and shall be credited wholly to the holder or holders of the alienated village where such holder or holders are entitled to the whole land-revenue of the village or proportionately to the share of such holder or holders when such holder or holders are entitled to a proportion only of the land-revenue in accordance with the conditions under which such holder or holders hold the alienated village.

6. Nothing in these rules shall be deemed to apply to lands which are alienated lands apart from the alienation of the village in which they are situated nor to lands in the actual possession and enjoyment of the holder or holders of the alienated village.

7. For the purposes of these rules the holder or holders of any alienated village shall be taken to mean the actual holder or holders or in cases of doubt the person or persons whose name or names is or are registered as such in the register kept under the provisions of section 53 of the Bombay Land-Revenue Code.

G. N. 5641 of 5th June 1907.

„ 12022 of 24th November 1908.

„ 2533 of 11th March 1911.

G. 14. Delegation of power of granting permission.—The power of granting permission to appropriate land to a non-agricultural purpose should be left ordinarily to all Assistant or Deputy Collectors in charge of a taluka or talukas in respect of lands in towns and villages not brought under Rule 56 clauses (II) to (VII). In special cases, *e. g.*, where the Assistant or Deputy Collector is inexperienced the Collector may reserve the power if he thinks it necessary. In villages of classes I to IV the power may also be delegated by the Collector to selected Mamletdars and in villages of class V to all Mamletdars. (G. R. R. D. No. 3459, dated 2nd April 1908 and 5295 of 1 June 1911.)

G. 15. Fines are abolished in those cases only where appropriation to a non-agricultural use is made with permission. (G. R. R. D. No. 3459 dated 2nd April 1908.)

G. 16. Quarries in occupied lands.—Where there is a keen demand for quarrying in occupied lands for purposes of trade altered assessment under this section should be levied. (G. R. No. 10424 dated 27th August 1917.)

J. I. Possession of land as owner for fifty years
 --User of land as graveyard and also as timber depot—Order by Government for discontinuing the user as timber depot—Order ultra vires Limitation Act (IX of 1908), sch. I, Art. 14.

No. 35

Section 65—

Substitute the following for G. 14 :—

“ Delegation of powers of granting permission.— For purposes of levying non-agricultural assessment villages are divided into two classes (No. 81 of the Land Revenue Rules). Subject to certain reservations, the power of granting permission for the non-agricultural use of land in the villages in class I is left ordinarily to Assistant and Deputy Collectors in charge of talukas and that in the villages in class II to mamlatdars and mahalkaris.”

(G.Rs. Nos. 3459, dated 2-4-1908, 5295, dated 1-11-1911 and 6406/28, dated 11-11-1931.)

Plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard, and on another portion of it they built a shed which was used as a timber shop. In 1871, Government assessed the land and entered it in the Revenue Registers as "Government waste land." The plaintiffs paid no assessment on the land. In 1908, the District Deputy Collector passed an order directing the Mamlatdar to "cause the building and the wood to be removed forthwith from the said land." This order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suits on the 2nd February 1910, to obtain a declaration that they were absolute owners of the land, to have set aside the order of 1909, and to get a permanent injunction, restraining Government from disturbing the plaintiffs in their possession of the land. The Lower Court dismissed the suits holding that the plaintiffs were not absolute owners but occupants only, and the suits were barred under Article 14 of the first schedule to the Limitation Act, 1908. The plaintiffs having appealed:—

Held, as the land in dispute was not used for the purpose of agriculture, neither Section 65 nor Section 66 of the Land Revenue Code (Bom. Act V of 1879) applied to the case, and the orders passed by the Revenue authorities to evict the plaintiffs were ultra vires. *Rasulkhan Hamadkhan v. Secretary of State for India*:

I. L. R. 39 Bombay 494.

[^a] **66.** If any such land be so [^b] used with-
 out the permission of the Collector being first ^{Penalty for so using land with out permission.}
 obtained, or before the expiry of [^c] the period
 prescribed by section 65 [^c], the occupant and
 any tenant, or other person holding under or
 through him, shall be liable to be summarily
 evicted by the Collector from the land so [^d]

used and from the entire field or survey number of which it may form a part, and the [e] occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so [d] used, such fine as the Collector may, subject to the general orders of Government, direct.

Tenant responsible to occupant in damages.

Any [f] tenant of any occupant or any other person holding under or through an occupant, who shall without the [e] occupant's consent [g] use any such land for [g] any such purpose, and thereby render the said [e] occupant liable to the penalties aforesaid, shall be responsible to the said [e] occupant in damages.

[a] As to the local repeal of s. 66, see para 5, of foot-note [a] on p. 1, *supra*.

[b] This word was substituted by Bom. IV of 1913, s. 25 (a), for the original word "appropriated".

[c—c] These words were substituted by Bom. I of 1910, Sch 1, Pt. II, Serial No. 5, for the original words.

[d] This word was substituted by Bom. IV of 1913, s. 25 (a), for the original word "appropriated".

[e] The word "registered" was repealed by Bom. IV of 1913, s. 25 (b).

[f] The words "co-occupant or any" were repealed by Bom. IV of 1913, s. 25 (b).

[g—g] These words were substituted by Bom. IV of 1913, s. 25 (a), for the original words "appropriate any such land to."

N. I. As regards determining the amount of fine leviable under this section, see table given in Appendix 4.

SUMMARY (s. 66).

Section 66—compared with sections 48

and 67 G 1, 5, 7

Fines—(1) on compounds G 2

(2) ordinary and extraordinary...G 4, 8

(3) none before Act 1 of 1865 ...G 3, 9

Squatters and } how to be dealt with ...G 6, 10
trespassers }

G. I. Precis of the law and rules on appropriations.—The following is a brief summary of the Law and the rules on the subject of granting permission to appropriate land assessed for purposes of agriculture to any other purpose, and of determining the amount of fine and altered assessment thereon :—

(a) Section 48 allows, on appropriation, revision of an assessment fixed under the Code (not of assessment fixed before the Code,—G. R. No. 4758, dated 3rd July 1886).

(b) If under Government orders specific appropriation has been prohibited, contravention, complete or attempted, entails liability to summary eviction.

(c) But appropriation may in certain cases be admissible:—

(1) For the more convenient occupation of the land for agricultural purposes as by farm buildings, wells and the like (Section 65, paragraph 1).

(2) By the Collector's assent :—

(a) express or

(b) implied from three months' silence after acknowledgment of application by the registered occupant for permission.

(d) That in cases where such assent is necessary and has been expressly or impliedly given, a fine is impossible whether a revised assessment may be levied or not.

(e) The amount of the fine is to be regulated by the general orders of Government. * * *

When the appropriation is not permissive but contrary to, or without waiting for, the express or implied orders of the Collector, then a fine may be imposed (vide Rule 74.)

And lastly the Collector may make his permission subject to such conditions as Government may,

in any special case, require the registered occupant to agree to, as the terms on which it shall be granted. (Section 67.)

Thus there is absolutely no limit to the terms on which permission may be granted. The only limit is to the penalty imposable in addition to eviction for forbidden appropriations.

When there was no administrative objection to a proposed appropriation, then the condition should not exceed a certain maximum, which should only be reached in special cases, of which the Collector should be the judge.

But when the circumstances are so exceptional that the Collector considers the ordinary maximum inadequate, he can refuse his permission and refer to Government, who alone can judge whether any and what special terms shall be offered to the registered occupant.

If the Collector consider that his permission would give the privilege on too easy terms, he has only to express his dissent within three months of the application. It is open to the Collector, when he thinks any appropriation would be inadequately compensated for by a fine on the ordinary graduated scale, to refuse his permission except on condition of payment of a fine calculated on the area actually appropriated at the rate of Rs. 250 per acre (the rate for land prescribed for Class I). If no application is made, or if the appropriation is made either without waiting for three months after his application for permission has been acknowledged, or in defiance of the Collector's orders, the Collector can then annul the appropriation by evicting the occupant or other person holding under him.

Unless when the Collector, considers the circumstances of a proposed appropriation so exceptional, as to require reference to Government under Section 67, no terms can be imposed in excess of the maxi-

mum allowed. The Collector is in each case, to exercise his own discretion as to what are special cases, bearing in mind that the ordinary rate should not exceed the maximum prescribed for the class to which, under notifications issued, the land in question properly belongs. (G. R. No. 6035, dated 25th August 1890.)

G. 2. Discretion in imposing a uniform rate.—When fines have to be levied at all, they should be levied at a uniform rate over the whole compound area and the rate should be imposed with reference to the circumstances of each case, for which discretion is allowed to Collectors by G. R. No. 8495, dated 20th November 1893. The uniform rate should not be so high as to discourage reasonably large compounds, or so low as to encourage the inclusion of unnecessarily large areas. (G. R. No. 6482, dated 2nd July 1894).

G. 3. Appropriations before 1865.—No fine should be levied on agricultural land appropriated without permission to non-agricultural purposes when Bombay Act I of 1865 was in force. A note should be made that the lands are to be subjected to building assessment on the introduction of the next revision settlement. (G. R. No. 9805, dated 30th November 1894.)

G. 4. There is no reason to suppose that Collectors will generally hesitate to apply the ordinary rates in ordinary cases, or will use the discretion given them to levy less than the ordinary rates in localities in which the provision of maxima, amounting to double or quadruple times the ordinary rates, sufficiently indicates that the ordinary rates are obviously and entirely inadequate. (G. R. No. 10468, dated 19th December 1894.)

G. 5. Treatment of appropriations noticed after a long time.—In a case where the settlement showed the land built upon as *pōt kharab* (appropriation being after the Code) and the remainder was

assessed as agricultural land and period of twelve years passed before the appropriation was noticed, it was held that the provisions of the Code as to guarantee against enhancement of assessment (*vide* Sections 102 and 106) cannot take away the power to impose a fine. The period of appropriation being long, the occupants should be informed of their liability under Section 66, but special terms should be offered under Section 67. (G. R. No. 6629, dated 30th August 1895.)

G. 6. Misappropriation by strangers.—The Collector should issue a notice to the occupants to show cause within 3 months why they should not be dealt with under section 66 for unauthorized misappropriation by trespassers who are not tenants or occupants. (G. R. No. 679, dated 22nd January 1896.)

G. 7. What was intended by the orders of 1894* (G. R. No. 6482, dated 2nd August 1894) was that, when the levy of a fine at a uniform rate would press heavily, an agreement under Section 67 might be negotiated. Such an agreement would not ordinarily affect occupancy rights. The orders or Section 67 does not require the relinquishment of such a right as a condition of the new agreement. (G. R. No. 4823, dated 28th June 1897.)

G. 8. Local officers should so use their discretion as to leave a liberal margin to cover risks and expenses of enterprises which make for the health and the prosperity of the people, &c. (G. R. No. 6505, dated 16th October 1900.)

G. 9. No fines could have been legally imposed under Bombay Act I of 1865, and Section 66 cannot be applied retrospectively. (G. R. No. 8516, dated 6th December 1901.)

G. 10. Eviction of squatters who settle on agricultural lands without the consent of the occupants.

It was proposed to Government that for the words "or other person holding under or through

Section 66—

For “ G. 6 ” substitute the following :—

“ Trespassers who unauthorisedly misappropriate agricultural land and use it for purposes other than agriculture may be summarily evicted. In such cases the occupant should be given notice to show cause why he should not be made to pay altered assessment leviable under section 48 as well as fine ”.

(G.R. No. 5202/28, dated 23-6-1930.)

him" in section 66 the following words may be substituted "or any other person whether holding under or through him or not."

2. Government in their order No. 10060 dated 20th August 1917 did not consider that any change in law is necessary. They, however, circulated the following copies of the opinions of the Remembrancers of Legal Affairs. No. 1449, dated 2nd November 1895.

I understand from the papers that there are legal occupants in perpetuity, who stand in the relation of tenants to Government that the third persons have unauthoritatively encroached on the lands of the tenancy, and that it is the wish of the Government as the landlord and reversioner to turn them out.

2. I further understand that the appropriation complained of has been in contravention of the terms of the section 65 of the Land Revenue Code.

3. The Collector's difficulty is that the terms of section 66 ib. appear to limit the action of the executive, in the way of guarding against that kind of unauthorised occupation or misappropriation of lands reserved for one purpose, to another, to the occupant and any tenant or other person holding under or through him, whereas here it is alleged in one part of the papers that the squatters are trespassers and have built their huts on the fields without and against the consent of the registered occupants. The Commissioner suggests that in reality there has been collusion between the squatters and the occupants.

4. The general principle is that a reversioner cannot sue for anything as an injury to his reversion unless it permanently injures his estate or operates in denial of his right. Here if Government should finally resolve to proceed by suit against the trespassers, the action might be so

grounded, unless they, the defendants, admitted that their occupation during the present tenancy was permissive. But I doubt whether there is any need to have recourse to that formal remedy.

5. As I read section 68, one of the terms lawfully annexed to his occupancy in the case of an occupant is certainly the due observance of the conditions imposed by section 65: So if an occupant allows another to misappropriate part of an agricultural holding for unauthorised purposes, he is answerable as though he has done so himself. And his permission may be inferred by conduct. For in the natural course of things no man would allow another to build on his fields, and so deprive him of a part of that land for which he has to pay rent, without immediately taking step against him, or coming to some private agreement with him, for their mutual advantage. In the absence of any attempt to oust the trespasser I think any court would presume that there was collusion, and therefore that the trespasser was holding under or through the occupant within the meaning of section 66.

6. It appears from the Collector's letter that the trespassers assert a title, and if that is so, the occupants ought to have it tried without delay. Otherwise it is practically a case of 'Qui facit per alium facit pro se,' and they are endangering their landlord's right. If after due notice they decline to do so, it is submitted, though not without doubt, that the Collector would be justified in treating the trespassers as holding under the occupant. Owing to the terms of section 61 there is certainly a technical difficulty of the kind felt by the Revenue officers, but I believe a Court would adopt the views I am expressing and override it.

7. The course I should recommend, as appearing to me the practical and reasonable course to be followed in such cases, is that the Collector should issue notice to the occupants to show cause (within

three months) why they should not be dealt with under section 66 in respect of these unauthorized misappropriations, and if within that time they should take no steps to have the encroachments repelled and the trespassers evicted by process of law, the Collector would assume that the trespassers were there with their consent and in the capacity of their sub-tenants, and would then take steps as by law provided under section 66 of the Land Revenue Code.

No. 30 dated 6th January 1896.

There seems to be no room for doubt that the Bombay Land Revenue Code, 1879, contains no provision for the summary eviction of persons trespassing on occupied unalienated land, or (when neither occupants within the definitions in section 3 (11) and (16) of that Code, nor tenants within the definition in section 3 (15) nor holding under or through a tenant or occupant), appropriating such land to purposes other than agricultural.

2. It is submitted that the obvious reasons for the omission to provide for the eviction by the Revenue authorities of such trespassers, on behalf the occupants, i.e., the persons "legally invested with a right to the possession and enjoyment or disposal of such land," (vide section 3 (10), Bombay Land Revenue Code, 1879.) were—

- (a) that the persons so legally invested with a right to such possession, enjoyment and disposal, had already a summary remedy provided by the Legislature in the Mamlatdars' Courts Act (Bombay III of 1876), as well as the means of protecting their rights by recourse to the ordinary courts of law, and
- (b) that it was not deemed either necessary or desirable that the Revenue authorities should be called on to assume the functions of a court for the recovery of

such possession on behalf of a private individual.

3. Occupants, as a rule, are not conspicuously remarkable for sleeping over their rights to the possession of land for which they have to pay land revenue and if they do so have only themselves to blame for the inevitable consequences, *Viz.* loss of title by adverse possession or whether the possession taken was permissive or not, ouster by the Revenue authorities on unauthorised appropriation to non agricultural purposes by the trespassers.

4. Section 66 of the Code does not require the Collector to go into the delicate question of fact whether the persons so unauthorisedly appropriating land are occupants, tenants, or others holding through or under the occupant or tenant, but empowers the Collector to turn the whole set out "if any such land be so appropriated," irrespective of the persons by whom the appropriation was made and to fine the registered occupant, providing further that the registered occupant may recover damages from any one lawfully invested with the right to possession etc. (i.e., co-occupants and their tenants, etc.) who may have effected the appropriation with the registered occupant's consent.

No provision is made giving the registered occupant a similar right to damages from persons not legally invested with the right to possession who appropriate without such occupant's consent, because the ordinary law gives such right against trespassers.

5. The evident reason why Section 66 was so drafted, it is submitted, to prevent any one legally invested with rights which he has every possible means of fully protecting for himself, from screening himself under the pretext of helplessness and ignorance from liability for such appropriation connived at or unresisted by him.

6. Therefore Section 66 makes all who are legally invested with the right to possession of unalienated land responsible for its preservation from unauthorised appropriation, and liable to forfeit all their rights if they neglected their responsibilities.

7. If however Government deem in any case that the eviction of the registered or other occupants could work hardship wholly or partly undeserved, there is nothing to prevent the exercise of clemency which seems to have been expressly contemplated in Section 67 of the Code, or the restoration of the occupancy after eviction.

8. In the present instance the occupants seem to have let the time to pass by within which they might have employed the summary and cheap procedure expressly provided by the Legislature in Bombay Act III of 1876, and the only summary procedure now possible is that provided in Section 66 of the Code which would involve their own eviction.

If the procedure involved entails hardship it is only because they have by their apathy left no alternative between that and a civil suit which would be much more expensive.

9. As long as the occupants are left in possession, they are responsible for the eviction of trespassers, and the hands of Government are tied by their inaction whether undesigned or collusive.

10. When they are ejected, if the trespassers continue their trespass they can be dealt with under Section 61 of the Code. Otherwise the land reverting to Government, the buildings can be removed as placed there by trespassers.

11. The original occupants or registered occupants might then, as a matter of grace, be restored to the occupancy.

Permis-
sion may
be granted
on terms.

[^a] **67.** Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid [b] on such terms [c] or conditions [c] as may be [d] prescribed by the Collector, subject to any rules made in this behalf by the Governor in Council [d].

[a] As to the local repeal of ss. 67 and 68, see paras. 5 and 4 respectively of foot-note [a] on p. 1, *supra*.

[b] The words "in special cases" were repealed by Bom. IV of 1913, s. 26.

[c-c] These words were inserted in s. 67 by Bom. VI of 1901, s. 8 (1).

[d-d] These words were substituted by Bom. IV of 1913, s. 26, for the original words "agreed on between Government and the registered occupant."

SUMMARY (s. 67.)

S. 67—Application of	...	...	G 1
Brick-kilns	...	...	G 5
Building regulations	...	...	G 4
Forms of agreement:—			
Registration of	...	...	G 6, 7
Standard	...	...	G 2, 3
Subdivisions under	...	...	G 8

G. 1. Application of the section.—This section should be generally applied in towns and at hill stations and such like places, and permission should not be granted in such cases unless such conditions as are considered desirable regarding the style of the building, the time within which it should be constructed, and the observance of Municipal or other sanitary regulations are agreed to. (G. R. No. 127, dated 6th January 1898.)

G. 2. Forms of agreement.—Collectors are authorised to enter on behalf of Government into agreements in the forms given in appendix 8.

(G. R. R. D. No. 1188, dated 13th February 1904).

1254, " 11th " 1910.

5124, " 26th April 1918.

G. 3. From paragraph 4 of Government Resolution No. 1188, dated 13th February 1904, and Form B attached to that Government Resolution, it will be seen that by these orders Collectors are authorized to enter into agreements under section 67, Bombay Land Revenue Code, in cases in which land has been appropriated to building purposes without permission. This authorization extends to all such cases, whether the Salsette rules, or orders similar to those rules, apply to them or not.

2. Under the orders, the power to exact a fine for building without permission is maintained, but it is within the discretion of the Collector to exercise it or not. The orders of Government Resolution No. 1188, dated 13th February 1904, are not cancelled by paragraph 4 of Government Resolution No. 4283, dated 6th June 1904. The effect of the two orders is that in cases in which conversion has taken place without permission, the Collector is to judge each case on its merits; if he thinks proper, he is to offer to the occupant an agreement; if the occupant refuse it, or if the Collector does not think proper to offer it, the fine under section 66 should be exacted. Form B, attached to Government Resolution No. 1188, dated 13th February 1904 should be adopted, as far as possible, in all such cases; and unless it is desired to make any material departure from the terms embodied in that form, no reference to Government is necessary. Any material modification of those terms should however, until further orders, be submitted for the orders of Government. Similarly agreements in Forms A and C should be offered in the cases for which they are prescribed, and it is unnecessary to obtain the orders of Government in each case, unless some material divergence from the terms of those agreement is deemed desirable. (G. R. R. D 5504, dated 18th July 1904.)

G. 4. Building regulations to be attached to agreements.—In all areas notified under Section 187

(1) of the Bombay District Municipal Act, 1901, revised regulations sanctioned in G. R. G. D. No. 3543, dated 15th June 1906, should be adopted with such modifications as the Committees may make.

2. In all places outside the notified areas, where the grant of permission is made conditional on passing agreements under Section 67, Collectors should attach to such agreements building regulations, conforming so far as they may consider necessary to those (*vide* Appendix 9) recently published for Salsette (G. R. G. D. No. 3543, dated 15th June 1906) or where they consider such regulations unnecessary, should omit the last sub clause of condition (5) in all the three forms of agreement sanctioned in G. R. No. 1188, dated 13th February 1904.

3. The revised regulations do not affect the agreements prescribed in G. R. No. 1188, dated 13th February 1904 which will remain valid, where entered into, whether within the limits of notified areas or not, during the remainder of the currency of the leases, unless the revised regulations are in any cases substituted by consent. (R. D. No. 7496, dated 6th August 1906.)

G. 5. Appropriation of agricultural lands for the manufacture of bricks.—In Sind agriculturists owning land which they are unable to cultivate on account of Kalar or mounds of earth or which is too high to obtain a flow supply, apply for permission to dig earth with the double object of turning the land into flow and of making bricks for sale.

2. The operation is completely legitimate under Section 65 if made with the *bonâ fide* and sole object of making improvements for the better cultivation of the land or its more convenient occupation for purposes of agriculture. In such a case it being necessary for those purposes to remove the materials, the occupant may sell them for what they will fetch, it being understood that any profit he may

thereby derive, is purely incidental and is not his actual *purpose*. If the purpose in view is, in the Collector's judgment, the profit derived from the sale of materials then the land is being appropriated to purposes unconnected with agriculture.

3. In the former case no formal permission seems to be necessary. But a person who sets about excavating his land without permission must do so at his own risk and subject to the view which the Collector may eventually take as to his real purpose.

4. When an application for permission is received, if the Collector is *satisfied* that the real purpose of the proposed operation is the improvement of the land, he is apparently bound to let it proceed without interference. But if not so satisfied, then he should treat it as an appropriation to non-agricultural purposes and refuse permission if he considers it for any reason undesirable, *e.g.*, if it means the creation of a rice swamp which would be objectionable on sanitary or other grounds, even though such swamp might be calculated incidentally to yield better crops.

The Collectors are authorised to enter on behalf of Government, under section 67 of the Land Revenue Code, into agreements in the case of appropriation of agricultural land for the manufacture of bricks on such terms or conditions (*Vide Appendix 10*) as may be agreed on between Government and the registered occupant. But the conditions under section 67 must be imposed by Government. (G. R. R. D. No. 8823, dated 12th September 1906 and 4016 of 19th April 1907.)

G. 6. Registration of Standard agreements necessary.—These documents (agreements executed under G. R. No. 6411, dated 16th September 1903, and No. 1188, dated 13th February 1904) are not leases within the meaning of section 105 of the Transfer of Property Act, and do not fall within Section 90 (d) of the Indian Registration Act. They

should therefore be registered with payment of the usual fees. (G. R. R. D. No. 2926, dated 23rd March 1909.)

G. 7. Registration.—So long as the permission is given in return for the agreement of the occupant to give up some of the Land or any other similar thing, the whole document amounts to an agreement and requires registration (Preamble of G. R. No. 10868, dated the 9th November 1909.)

G. 8. Sub-divisions.—Agreements under this section do not allow sub-divisions of Land. (R. 2101, 23rd February 1916.)

Occupant's
rights are
condi-
tional.

Proviso

[^a] 68. An occupant [^b] is entitled to the use and occupation of his land for the period, if any, to which his [^c] tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms [^d] or conditions [^d] lawfully annexed to his [^c] tenure [^c]:

[^c] Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to [^f] rules made by the Governor in Council in this behalf [^f], prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not,

Section 67—

Insert G. 13 :—

“ It is lawful for the Collector to grant permission for the non-agricultural use of the land, on such conditions as he chooses to impose, subject to the rules made by the Governor in Council in this behalf. As no rules have been made under section 67 it is competent for the Collector to impose a condition for the forfeiture of occupancy under certain circumstances.”

(G.R. No. 143/28, dated 14-3-1929.)

No. 40

Section 67—

Insert G. 14 :—

“ When no condition of forfeiture of occupancy is imposed, land cannot be forfeited for breach of condition requiring the occupant to erect a building thereon within a stated time, as this is not a condition attached to the tenure of the land.”

(G.R. No. 143/28, dated 18-3-1931.)

be held only for the period and subject to the conditions so prescribed.

(a) As to the local repeal of ss. 67 and 68, see paras 5 and 4 respectively of foot-note * e (a) on p. I, *supra*.

(b) As to the local modification of the word "occupant," see para. 5 of foot-note [a] on p. I, *supra*.

(c) This word was substituted for the original word "occupancy" by Bom. IV of 1913, s. 27.

(d-d) These words were inserted in s. 68 by Bom. VI of 1901 s. 8 (1).

(e) This proviso to s. 68 was added by Bom. VI of 1901, s. 8 (2).

(f-f) These words were substituted by Bom. IV of 1913, s. 27 for the original words "the orders of Government."

N. I. This proviso was added by Bombay Act VI. of 1901, Section 8 (2): It enables the Collector to allow lands to be taken up on short leases and special terms which may include a restriction of transferability, whether by private contract or by attachment and sale under the orders of a Civil Court, notwithstanding that a survey settlement may have been extended to those lands, while Section 73 A provides for the lands into which a Survey Settlement has not been introduced. (para 3 of statement of objects and reasons of Bill IV of 1901.—B. G. G. Pt. V, page 246.)

G. I. When should annual leases be taken.—It is not the intention of Government that land should be given out on annual leases, except in the special cases in which a permanent tenure is unsuitable or impracticable. (G. R. No. 7873, dated 8th November 1901.).

G. 2. Free power of transfer should be allowed.—Under the rules as amended, agreements in one or other of the forms in Appendix B must be executed in all cases in which occupancies are granted in perpetuity, whether with or without free power of transfer, if no other special terms are attached. If an occupancy is granted for a fixed period, a lease should be executed in accordance with Rule 31.

(2.) In the exercise of discretion to sanction lease mortgage, sale, or other encumbrance, when such sanction is needed by the agreement, the Collector will be guided generally by the considerations, whether or not the occupant can continue to cultivate efficiently without borrowing, and whether the transfer or encumbrance is desirable in his interest. Permission should, however, ordinarily be granted without question to a transfer from one agriculturist to another for the purpose of cultivation by the latter in person, and to a lease to one agriculturist by another who is unable to cultivate in person, and it should be made generally known that, except for very special reasons, sanction to such transfers and leases will not be withheld. (G. R. No. 8610, dated 11th December 1901.)

G. 3. Regrant of confiscated lands.—The order of regrant should be cancelled either when the land has been granted for improper reasons and when hardship or injustice has been caused to the former occupant. In the case of cancellation it will be necessary to refund at the cost of Government the amount paid by the person evicted and such proved expenditure as may not reasonably be held to have been recouped, but in the event of the latter having resulted in improvement of the land, it may be reasonable to require repayment of it as a condition of restoration to the former occupant.

2. The conditions prescribed in G. R. No. 5621, dated 8th August 1901, are based on instructions given by Government of India and must be fully carried out. They were mainly intended for cases in which there existed mortgages without possession, so as to avoid increase of encumbrances. (G. R. No. 4503, dated 2nd July 1902.)

G. 4. Applicability.—Sections 68 and 73 both in their original and amended form affect only unalienated land. (G. R. R. D. No. 5024, dated 21st July 1902.)

G. 5. Delegation of powers.—Mamlatdars and mahalkaries may grant Government waste Land for one year for temporary cultivation. (G. R. No. 5295 of 1st June 1911, item 36.)

69. The right of Government to mines and mineral products in all unalienated land is and is hereby declared to be expressly reserved :

Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant [a] of such land in respect of such mines or mineral products.

[a] As to the local modification of the word "occupant," see, para, 5 of foot-note [a] on p. 1, *supra*.

N. I. The object of this section is to reserve the rights of Government to all mines, mineral products, and buried treasures with full liberty to work and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector. (Select Committee's report on the Revenue Code Bill.)

G. I. Reservation unnecessary in Kabulayats of unalienated lands.—This section applies to all unalienated lands. It is therefore unnecessary to make express reservation of the Government rights to mines and minerals in the leases or Kabulayats relating to such land. When however such land is transferred to the ownership of any person, so that it would come within the meaning of the term "alienated" as defined in Section 3 (19) of the Code, the rights of Government and the assignees in that behalf to the minerals ought to be expressly reserved as this section would not apply in such a case. (G. R. No. 6688, dated 15th December 1879.)

G. 2. Rights of Talukdars over minerals existing in Lands in their possession :—

A Talukdar possesses no rights to mines and minerals in the lands which he holds from Government on payment of jama. Government have no

objection to the disposal by the Tálukdárs of minor products, such as stone and kankar, occurring in their Lands. When such products are required for a public purpose they should not be removed from a Tálukdári holding without either the consent of the Tálukdár or proper payment if such be demanded by the Tálukdár. (G. R. No. 5096, dated 6th August 1898.)

G. 3. Kankar, Stone and Laterite quarries are exempted from the operation of the Indian Mines Act, VIII of 1901. (G. N. No. 4231, dated 19th June 1901.)

G. 4. Slate, lime and clay :—Mining rules do not apply to minor minerals such as slate, lime and clay. Special rules are, therefore, unnecessary. The provisions of the Land Revenue code and the rules under it are sufficient for practical purposes. (G. R. R. D. No. 9405, dated 21st November 1905.)

J. I. RIGHTS TO MINERALS.

—:o:—
Appeal-No. 732 of 1913.

Mukund Gopinath Patel and others' (appellants and original defendants) vs. Ghabildas Lallubhai (respondent and original plaintiff.)

(BEFORE THE HON. JUSTICE SÍR STANLEY
BATCHELOR AND THE HON. MR.
JUSTICE SHAH.)

This was an appeal from the decree of the Assistant Judge of Thana reversing the decree of the first court.

The plaintiff was the proprietor of the "alienated" village of Magathene and was granted a commission under Section 88 of the Land Revenue Code by the Government. Survey Settlement was introduced in the village about the year 1867-1868.

The land in dispute was comprised in Survey No. 34 of that village and was what is known as *Varkas* land. The defendants were the holders of

this land and the *Khatas* of that land stood in the name of the defendant's grandfather since 1865. In October, 1910, the defendant commenced working a stone mine in that land. The plaintiff objected to this and claimed to be the full owner of the land and to be entitled to all the minerals situate therein and sought to prohibit the defendants from working or opening any mines therein. He, therefore, filed this suit and prayed for an injunction, restraining the defendant from opening or working any stone mines in the land described in the plaint or in any other land situate in the village of Magathene, and for the recovery of Rs. 25 as damages for the working of the stone mine and further damages at Rs. 2 per day from the filing of the suit upto the closing of the mine.

The defendants contended that the village did not belong to the plaintiff and that he had no right to it except that of collecting the assessment and that the land in dispute was their *Surti* land and that they were the owners of all the mines and minerals in it. They also disputed his claim for damages and contended that the suit for injunction could not lie.

The joint Sub-Judge, who tried the case, held that the plaintiff was not entitled to an injunction and that he was not the owner of the minerals. As the defendants were the holders of land before the survey of the village took place, the introduction of the survey did not extinguish their rights to the minerals. In appeal, the Assistant Judge of Thana reversed this decree of the first court. He held that by Section 69 of the Land Revenue Code the right of the Government to mines was expressly reserved and the occupants of unalienated lands had no right to the mines or the minerals in the land.

The defendant appealed.

Mr. M. R. Jayakar, with Mr. Ramdatt Desai, appeared for the appellants.

Mr. Hormazdiar C. Coyajee, with Mr. S. S. Patkar, and Mr. D. S. Varde, appeared for the respondent.

Their Lordships confirmed the decree of the Lower Appellate Court as to injunction but varied the order as to costs, each party to bear his own costs.

Times of India, dated 19-2-16.

Occupancy when not liable to process of Civil Court; the Court to give effect to Collector's certificate.

70. [a] In any case where [b] an occupancy [b] is not transferable without the previous sanction of the Collector, and such sanction has not been granted to [c] a transfer [c] which has been made or [d] ordered by a Civil Court [d] or on which the Court's decree or order is founded,

(a) such occupancy [e] shall not be liable to the process of any Court, and such transfer shall be null and void, and

(b) the Court, on receipt of a certificate under the hand and seal of the Collector, to the effect that any such occupancy [e] is not transferable without his previous sanction and that such sanction has not been granted, shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such occupancy [e].

[a] Words repealed by Bom. IV of 1913, s. 28 (a), are omitted.

[b—b] These words were substituted for the original words "the occupancy or interest of the occupant in the land" by Bom. IV of 1913, s. 28 (b).

[c—c] These words were substituted for the original words "the transfer" by Bom. IV. of 1913, s. 28 (b).

[d—d] These words were substituted for the original words "ordered by the Court" by Bom. IV of 1913, s. 28 (b).

[e] Words repealed by Bom. IV of 1913, s. 28 (c), are omitted

71. *Repealed by Bom. IV of 1913, s. 29.*

[^a] **72.** If an occupant [^b] who is either ^{Intestate} a Hindu, a Mahomedan or a Buddhist dies in-^{occupancy} testate and without known heirs, the Collector ^{or holding} shall dispose of his occupancy [^c] by sale, sub-^{to be sold.}ject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue, and the law at the time in force concerning property left by Hindus, Mahomedans or Buddhists, dying intestate and without known heirs shall not be deemed to apply to the said occupancy [^c] but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to Government and all expenses of the said sale.

[^a] As to the local repeal of s. 72, see para. 4 of foot-note [^a] on p. I, *supra*.

[^b] As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note [^a] on p. I, *supra*.

[^c] As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note [^a] on p. I, *supra*.

SUMMARY (s. 72.)

Section 72 (1) applicable to:—

- | | |
|-----------------------------|-----------------|
| (a) registered and un- | } G 1,3
J 1. |
| registered occu- | |
| pants | |
| (b) house and move- | |
| able property in | |
| towns where land | |
| registers are kept. | G 6. |
| (2) not applicable to alie- | |
| nated lands | G 2. |
| (3) distinguished from:— | |
| (a) Section 56 | G 1, |

- (b) Regulation 8 of
1827 G 5.
(4) to be supplemented by
s. 81 in case of alleged
vendees G. 4

Powers under this section :—

delegated to sub-divi-
sional officers G 7.

G. I. Opinions of law officers on the subject:—

The following opinion of the Remembrancer of Legal Affairs on the question, whether Section 72 of the Code is to be put into force in every case in which a registered occupant dies intestate and without known heirs, irrespective of the fact that there are occupants who, though not registered occupants, have vested interests in lands, is given here in full:—

“The ordinary law regarding the property of a person who dies intestate and without known heirs is that contained in Section 10 of Regulation VIII, of 1827. Under it the District Court appoints an administrator for the management of the property, and after he has had charge of it for about two years it is sold under the orders of the High Court and the proceeds are ‘deposited in the public treasury for the eventual benefit of all concerned.’

“2. Section 72 of the Revenue Code excepts occupancies belonging to Hindus, Mahomedans or Buddhists from this general law, and directs that in their case ‘the occupancy shall be disposed of by the Collector by sale, subject to the provisions in force * * *, for the sale of forfeited occupancies in realization of the land revenue’ and that the net proceeds only shall be subject to the provisions of the ordinary law regarding intestate property. The effect of this is that the occupancy of a Hindu, Mahomedan or Buddhist who dies intestate and without known

heirs, instead of being managed and eventually sold by the Nazar of the District Court (who is generally the administrator appointed under Section 10, Regulation VIII, of 1827), is sold by the Collector and the net proceeds are made over by the latter to the Nazar for credit to the deceased's estate.

"3. The doubt which seems to have prompted the Commissioner's (C. D.'s) letter is whether when occupancies are thus sold by the Collector, they are to be sold 'freed from all tenures, encumbrances and rights created by the occupant,' like forfeited occupancies (*vide* Section 56 of the Revenue Code) or whether the right, title and interest of the deceased occupant merely is to be disposed of.

"4. The intention of Section 72 of the Code appears to be to prevent the occupancies of persons dying intestate coming under the management of the District Court's administrator. The section was inserted by the Select Committee who, in paragraph 32 of their final report on the Revenue Code Bill, dated 1st May 1877, said its purpose was 'to enable the Collector to dispose of the occupancy of an occupant dying intestate and to stay the operation of the law regarding property left by persons dying intestate until the occupancy has been sold and arrears due to Government secured.' Much correspondence and trouble are saved by keeping the control of such property in the hands of the Collector, who is obviously far better able than the District Court's Nazir to manage and sell it to the advantage of the deceased's estate. It was not, I think, the intention of the Legislature to forfeit in such cases subordinate rights created by the deceased occupant. The words in Section 72 'subject to the provisions * * * in force for the sale of forfeited occupancies in realization of the land-revenue' may, at first sight, be thought to bear this meaning, but it ought not to be concluded that it was the intention of the Legislature thus to

abrogate vested rights unless such intention is very clearly and unmistakably indicated in the language of the enactment. The words which I have quoted do not appear to me to mean more than that an intestate occupant's occupancy should be sold, subject to the same rules for regulating the sale as a forfeited occupancy, and this construction of them is consistent with the apparent purpose of the section. There is no reason to think that the Legislature contemplated attaching the same penal consequences to an occupant dying intestate and without known heirs as to the failure of a living occupant to pay the land revenue due on his occupancy. Such a provision would be unjust, and whenever the language of an enactment 'admits of two constructions according to one of which the enactment would be unjust * * * and according to the other it would be reasonable and wholesome, it is obvious that the latter must be adopted as that which the Legislature intended.' (Maxwell, interpretation of Statutes, 179.)

"5. On these grounds I am of opinion that, under Section 72 of the Revenue Code, all that the Collector sells is the right, title and interest of the deceased occupant and that subordinate rights are not affected by such sale. This was also the opinion of my *locum-tenens*, the late Mr. Cordeaux, who wrote (*vide* paragraph 2 of his memorandum quoted in the preamble of G. R. No. 2711, dated 26th April 1882, see order No. (1) above) 'the occupancy in this case is not forfeited by Government before it is disposed of by sale. It is sold as the heritable transferable property of the deceased occupant.'

"6. But although subordinate rights are not affected by the sale, I am still of opinion, as stated in my report quoted in the preamble to G. R. No. 3102, dated 20th April 1883, (printed under Section 79), that if the deceased was a registered occupant the Collector is not bound to recognize

his vendees or other subordinate holders. If the deceased person is the registered occupant, the Collector is not bound to recognize 'any person to whom any interest in any portion of the occupancy * * * has been assigned.'

"7. It follows from this view of the law that I differ from the late Mr. Cordeaux in thinking it necessary that the Collector should hold an inquiry for the purpose of ascertaining 'whether the occupancy has not passed to some other person who is in lawful possession.' The Collector, if he held any such inquiry, would not be competent to pass any order determinative of the rights of the respective claimants and possibly many claimants would object to reveal their title to him. I agree, therefore, with the Commissioner that inquiry is unnecessary. The title of the deceased should be sold for what it is worth, the purchaser making his own terms with, or taking such steps as he thinks fit against other claimants in such a case as that which the Commissioner has stated as a representative case, it may be that the purchaser of a deceased registered occupant's right, title and interest will sometimes acquire nothing by the purchase except the right to become the registered occupant. In such cases it will usually be to the interest of the assignee or of one of the assignees of the deceased registered occupant to become the purchaser.

"8. A fuller consideration of the subject leads me to think that the opinion submitted in the last sentence of my memorandum No. 446, dated 6th April 1883 (quoted in the preamble of G. R. No. 3102 of the 20th idem), was not correct. Looking to the wording of Section 79 of the Revenue Code alone, I said 'there is nothing to prevent the Collector recognizing' the deceased occupant's assignee without selling the deceased's right, title and interest. When thus writing, I overlooked the im-

perativeness of the words 'the Collector shall dispose of the occupancy by sale' in Section 72. Those words appear to me to leave the Collector no option. The right, title and interest of the deceased must be sold for what it will fetch. The reason of this is that the Collector, so far as regards these occupancy rights of persons dying intestate, takes the place of the administrator appointed by the District Court under Regulation VIII. of 1827 and just as it was formerly the duty of the administrator to sell such rights for whatever they might fetch 'for the eventual benefit of all concerned,' so is it now the Collector's duty to realize by the sale of the deceased's right, title and interest whatever he can for the benefit of the estate.

"9. In order to complete this explanation of the meaning and intention of Section 72 of the Revenue Code I agree with the late Mr. Cordeaux that the word 'occupant' which is used in it, must be taken in its general sense, as defined in Section 3, clause 16 of the Code, and not be deemed to apply to registered occupants only. If the person who has died intestate and without known heirs is an occupant but not a registered occupant, his right, title and interest will be sold by the Collector without affecting in any way the title of the registered occupant." (G. R. No. 783, dated 27th January 1885.)

G. 2. Section 72 not applicable to alienated holdings.—The word occupant cannot be held to include a holder of alienated land, and the Collector should not, therefore, attempt to take action under this section in the case of alienated holdings. (G. R. No. 3812, dated 13th May 1885.)

G. 3. Collector to take the initiative.—Government having decided in their Resolutions marginally noted that the provisions of Section 72 should be enforced, not only in the case of registered occupants, but in the case of occupants also, it was

pointed out that it would not be always possible for the Collector who must take the initiative in the matter to comply with those provisions inasmuch as the names of "occupants" were not recorded in the Collector's book. The point was referred to the Legal Remembrancer, who gave his opinion as follows:—

G. R. No. 2711,
dated 26th
April 1882.
G. R. No. 783,
dated 27th
January 1885.
(Vide orders
Nos. (1) and
(2) above.)

"Section 19 of the Bombay Village Police Act (VIII. of 1867) imposes upon the police patil the duty of taking charge of all unclaimed property and of reporting his proceedings to the Magistrate to whom he is subordinate. Property left by a person who dies intestate and without known heirs is 'unclaimed property' within the meaning of this section, and if, in addition to some moveable property, the intestate has left some lands inquiry will soon enable the Magistrate to determine whether the deceased was an occupant and whether, therefore, the Collector should take action under Section 72 of the Revenue Code. As a matter of practice, I believe every case of a person dying intestate is reported by the village officers to the higher authorities, whether under the provisions of Section 19 of the Village Police Act or otherwise, and there is little probability, I should think, of any case of any importance escaping notice. The Collectors can only take action in the cases which are reported to him, and I do not think there is any need for special measures to ensure every case being reported. The number of occupants, not being registered occupants, who die intestate and without known heirs, is probably inconsiderable," (G. R. No. 3813, dated 13th May 1885.)

G. 4. The following opinions have been concurred in by Government:—

(a) The Advocate-General's opinion:—

"In the case of a registered occupant, such as described in Section 72 of the Land Revenue Code, dying intestate and without known heirs and of

another person claiming that the occupancy has been sold to him by the deceased though not transferred in the Government books, I am of opinion that the provisions of Section 72 come into force, by which it is enacted that—

‘The Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue.’

“It is difficult not to consider the provisions of Section 56 as being provisions for the sale of forfeited occupancies in realization of the land revenue within the meaning of Section 72. And having regard to the provisions in Section 72—

‘That the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or absolute holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.’

“I think that the Collector is empowered to sell the occupancy of the deceased registered occupant without regard to the rights (if any) of the alleged vendee.

“But I think that the Collector should exercise this power so as to interfere as little as possible with any right, the existence of which is established to his satisfaction. In my opinion the provisions of Section 81 which afford an alternative procedure in certain cases for the sale of a forfeited occupancy in realization of land revenue may properly be regarded as included among the provisions referred to in Section 72. If therefore, the Collector is satisfied that the occupancy has really been sold by the deceased registered occupant to the alleged vendee, and that such procedure will meet the justice of the case, I think that he may properly substitute the name of the alleged vendee in

the revenue records for that of the deceased registered occupant.

"I observe that section 56 enables the Collector to dispose of a forfeited occupancy under rules or orders to be made under Section 214. I am not aware whether any rules have been made in this behalf under Section 214, but if such rules have been made and the Collector has power thereunder to dispose of a forfeited occupancy without prejudice to rights previously created by the occupant, it seems desirable that he should adopt such mode of procedure in cases similar to the one suggested under Section 72, when the case does not seem to him to be one in which the provisions of Section 81 can be properly applied." (G. R. No. 10023, dated 14th December 1885.)

G. 5. The Legal Remembrancer's opinion :—

"But if there be no heir, assignee or other person claiming through the deceased intestate, the property lapses to the Crown by escheat.

"The property vests in Her Majesty not by virtue of Regulation VIII. of 1827, but by virtue of the territorial law of British India. ^{1. Bengal L. R. O. G. 87.}

"On failure of heirs, the Collector, it appears to me, would be as much 'entitled to receive charge of the property' on behalf of Her Majesty as any other person to whom rights accrued on the death of the deceased.

"If any heir subsequently appear, the result would be the same as if the estate had been claimed by a private person, whose right was afterwards found to be excluded by a better title.

"In such a case Government would be responsible to such heir. But there is no necessity for a sale by the Court, nor do I think that the property could be sold, if the Collector claimed that he was entitled to receive charge of the property on behalf of Her Majesty.

"In order, however, to avoid the risk of litigation in such cases as to claims that might afterwards be brought forward, I think the High Court might be moved to direct under Section 10, clause 4 (of the said Regulation), that such property should continue under the management of an administrator, until such period had elapsed as would render the chance of any claim being preferred infinitesimally small, and Government might then, through the Collector, put in their claim to the property as having passed to Her Majesty by escheat.

"The point has, so far as I can ascertain, never been decided, but there are several cases on record in which Government have claimed the right to specific property by escheat, and there is no law which requires that instead of taking the specific property Government would be entitled only to the proceeds realised by its sale. Legislation is, therefore, I would submit, unnecessary.

"The question involved might perhaps be raised in a test case if desired, and if the High Court hold that intestate property must in all cases be sold, whether the right of the Crown is put forward or no, steps might be taken to modify the law as to the procedure to be taken in such cases. But I think the rights of the Crown do not depend upon Regulation VIII. of 1827, and Section 10, clause 4, only prescribes the procedure, when no claim whatever is preferred to the property." (G. R. No. 8407, dated 15th December 1888.)

G. 6. The Collector to hold inquiry in person.— No exception appears to have been made in the case of large towns, and this section is applicable to house and moveable property in large towns where land registers are kept. But it is an error to regard entries in the revenue record as evidence of title. They do not more than indicate the person responsible for Government assessment and invested with the privileges of the registered

occupant. In contested cases under Section 71 the Collector has no legal authority to thrust the burden of investigation upon the Civil Court and is bound to hold himself such an inquiry as may be necessary. His decision is no award, and the aggrieved party has his remedy of a suit in a Civil Court. (G. R. No. 8488, dated 27th November 1899.)

G. 7. Delegation of powers.—Sub-divisional officers can pass orders under this section. (G. R. No. 5295, dated 1st June 1911 item 42.)

J. I. Entry in Collector's book gives no title.—The fact of a person's name being entered in the Collector's book as an occupant of land does not of itself establish that person's title or defeat the title of any person. The Collector's book is kept for the purposes of revenue not for purposes of title. (I. L. R. XIII, Bombay 75, *Bhagogi vs. Bapugi* 1889.)

(b) **73.** [x][c] An occupancy [c][a] shall, ^{Occupancy to be transferable and heritable.} subject to the provisions contained in section 56, and to any conditions lawfully annexed to the [d] tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property.

(a) As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note (a) on p. 1, *supra*.

[b] As to the local repeal of s. 73, see para. 4 of foot-note [a] on p. 1, *supra*.

[x] This section was substituted for the original s. 73 by Bom. VI of 1901, s. 10.

[c-c] These words were substituted for the original words "the right of occupancy" by Bom. IV of 1913, s. 30.

[d] This word was substituted for the original word "occupancy" by Bom. IV of 1913, s. 30.

(1) **Applicability.**—Sections 68 and 73 both in their original and amended form affect only unalienated land. (G. R. No. 5024, dated 21st July 1902.)

Power to
restrict right
of transfer.

[^a] **73A.** (1) Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by Notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, [^b] occupancies shall not after the date of such Notification be transferable without the previous sanction of the Collector.

(2) Government may, by Notification in the *Bombay Government Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

[a] Section 73A was inserted by Bom. VI of 1901, s. 11.

[b] This word was substituted for the original words "the occupancy or interest of the occupant in the land" by Bom. IV of 1913, s. 31.

SUMMARY (s. 73A.)

Section 73 A—not applicable to, Inam

villages	...	...	...	...	N 3
Collector—powers of	...	...	...	...	N 1, G 6
Entries in Govt. Records	...	...	...	...	G 3, 4
Lands—(1) on ordinary tenure	...	...	...	...	N 2
(2) restricted tenure	...	...	...	...	G 9
(3) given to Bhils...	...	...	...	...	J 1
Pardanishin lady	...	...	...	...	N 4
Persons exempted under clause (2)	...	...	...	...	G 2,5,6,7
Powers—delegated to sub-divisional officers	...	...	...	...	G 8
Villages—to which clause (1) is made applicable	...	...	...	...	G 1, 6

N. 1. The power reserved by Government under clause 2 of this section does not take away the Collector's power under the last sentence of clause 1. to transfer any particular occupancy from the new to the old tenure.

N. 2. Ordinary tenure should not be converted into restricted tenure without publication of notice and investigation into the circumstances with a view to protecting creditors against fraud. (Government Gazette Part VIII for 1908 page 11.)

N. 3. The grant of Lands on restricted tenure in Inam villages is not authorised by the provisions of the Land Revenue Code.

N. 4. A parda-nishin woman is the most unsuitable person to exempt from the operation of clause 2.

G. 1. Villages in which clause 1 of the section is made applicable.

(a) 79 villages in Nandurbar Taluka.	}	G. N. No. 1116 A.
		Dated 18-2-1902.
(b) 66 villages in Navapur Taluka.	}	G. N. No. 5348.
		Dated 2-8-1902.
	}	G. N. No. 6279.
		Dated 14-7-1910.
(c) 17 villages in Shirpur Taluka.	}	G. N. No. 1116 B.
		Dated 18-2-1902.
(d) 42 villages in Taloda Taluka.	}	G. N. No. 1116 C.
		Dated 18-2-1902.
(e) 11 villages in Shahada Taluka.	}	G. N. No. 1116 D.
		Dated 18-2-1902.
	}	G. N. No. 296.
		Dated 10-1-1908.
(f) Sakri Taluka.	}	G. N. No. 1116 E.
		Dated 18-2-1902.

G 2. Classes of persons exempted under clause II of the section:—

(a) All Brahmins and Baniyas (Vanis) holding lands in the villages of Nandurbar and Navapur Talukas to which the provisions of section 73A (1) have been declared applicable. G. N. No. 10363 A. Dated 22nd October 1907.

(b) All Brahmins and Baniyas (Vanis) holding Lands in the villages of Shirpur Taluka to which the provisions of section 73A (1) have been declared applicable. G. N. No. 11559. Dated 13th November 1908.

(c) All Marwadis, Khatris, Parbhus, Bhoris and Parsis in the villages in the Shirpur Taluka to which the provisions of section 73A (1) have been declared applicable. G. N. No. 3875. Dated 22nd April 1909. G. N. No. 355. Dated 11th January 1916.

(d) All Marwadis, Khatris, Parbhus, Bhoris and Parsis holding Lands in the villages of the Nandurbar, Taloda, Shahada and Sakri Talukas and the Navapur Taluka of the West Khandesh District. G. N. No. 9147. Dated 21st September 1909. G. N. No. 355. Dated 11th January 1916.

(e) All Brahmins and Baniyas (Vanis) holding Lands in the villages of the Taloda, Shahada and Sakri Talukas of the West Khandesh District. G. N. No. 9147A. Dated 21st September 1909.

* **G 3.** Alterations of tenures should be noted in all survey documents. (G. R. No. 2961, dated 11th June 1874.)

G 4. Change in the village and taluka revenue forms.—A subsidiary column 19A after Col. 19 in

Village Form No. 1 should be added to show the non-transferability of the land with a note in the remarks column of the number and date of the Kabulayat and Taluka Form No. 31 and village Form No. 18 B, should be divided into two parts (1) for registering the agreements of lands held on the ordinary survey tenure and (2) for registering those of lands held on the restricted tenure. (G. R. R. D., No. 8236, dated 24th November 1902.)

G 5. Exemption should be given to all Brahmins and Banias among the petitioners of villages of Velavad, Pimplod, Natavad, Umarda, Kotli, Kothada, and Gherasgaon of Nandurbar Taluka, District West Khandesh, at once and to those of the Gujars and Vanjaris and other non-aboriginal castes of the advanced agricultural classes and fitted to exercise right of transfer. (G. R. R. D. No. 6747, dated 13th July, 1906.)

G 6. Procedure for personal exemptions.—With regard to personal exemptions; these should be granted only in the following circumstances: When in any area which has been notified, under section 73A (1), any person belonging to a class which has not been exempted by a notification under section 73A (2) desires to transfer his occupancy or his interest therein and seeks the sanction of the Collector to such transfer under section 73A (1), he may take the occasion to apply for exemption under section 73A (2). The Collector should then consider the application and after due inquiry should submit the applicant's name for exemption by notification in the *Bombay Government Gazette* in accordance with the provisions of section 73A (2) or should refuse the application as he may see fit. The exemption, if granted, will continue only during the lifetime of the grantee.

The effect of notification under Section 73A (1) —If a person holding an occupancy declared non-transferable under section 73A of the Land Revenue Code relinquishes his non-transferable

occupancy, the Collector cannot regrant it to him on the ordinary tenure, for otherwise the Collector would be exercising the power of exemption reserved to Government alone by section 73A (2).

Where any land has been declared non-transferable under section 73A, such land *per se* remains non-transferable for so long as the declaration remains in force, except during such period as such land is in the hands of a person exempted from the non-transferable tenure under sub-section (2) who by virtue of his particular status is permitted to transfer land not ordinarily transferable. Hence it cannot be contended that the power of making land non-transferable under sub-section (1), when once exercised, is spent and cannot be revived. But when an exempted person transfers the land to a non-exempted person, the force of the exemption is spent and the land becomes subject to the conditions of its tenure affixed under sub-section (1). A non-exempted person cannot therefore transfer land to which section 73A (1) applies without the Collector's consent, whoever may have been the previous holder and whatever may have been the terms under which the non-exempted person acquired the land.

A notification under sub-section (1) may only be issued before the introduction of the original survey settlement; but powers under sub-section (2) may be exercised "from time to time" as the wording expressly declares.

In any area which has not been notified under section 73A (1) of the Bombay Land Revenue Code, the Collector is empowered to attach to the grant of an occupancy a condition that the occupancy shall not be transferable without his previous sanction, and it has been directed that this condition shall be attached in the case of grants to members of backward classes only. The Collector is therefore precluded by the orders of Government from attaching the condition to a grant of occu-

pancy made to a member of the more intelligent classes. When the condition has been attached to the grant, the land of which the occupancy is granted may not be transferred without the consent of the Collector. If the Collector gives permission to transfer, the condition of non-transferability without his previous sanction will continue to apply to the occupancy, unless he is pleased to cancel it. Thus any land in the areas now under consideration, of which the occupancy has been granted by the Collector subject to the condition that it shall not be transferred without his permission, will continue to be subject to that condition unless and until the condition is cancelled by an order of the Collector to that effect. The Collector has no authority to attach the condition of non-transferability to any existing occupancies in areas not notified under section 73A (1) ; he can only accept relinquishment of such occupancies, and grant fresh occupancies subject to that condition.

In tracts or villages which have been notified under clause (1) of section 73A, the condition of non-transferability without the previous sanction of the Collector became attached to all occupancies existing at the date of the notification, and also attaches to all new occupancies granted after that date, unless and until a notification is published under section 73A, (2) granting exemptions from the operation of the Section. No notifications have been published under clause (2) of section 73A, exempting from the operation of the section any part of a tract or village notified under clause (1) ; but there have been notifications exempting from such operation persons and classes of persons. As soon as a notification of such exemption appeared in the *Government Gazette* the occupancies held by such persons, or by members of such classes, became freed from the condition of non-transferability without the previous sanction of the Collector, and from the date of the notification the Collector became

bound, when granting new occupancies to those persons, or to members of those classes, to grant them without that condition. In villages, therefore, which have been notified under section clause (1) of section 73A, and in which there are persons or classes of persons who have been exempted under clause (2) of that section, all occupancies, old and new, exist and must be granted subject to the condition of non-transferability except only those occupancies, old and new, held by or granted to the persons, or the members of the classes of persons, exempted under clause (2). When with the previous sanction of the Collector a person holding an occupancy to which the condition in question is attached, transfers his occupancy to another person, if the transferee has not been exempted under clause (2), the special condition continues to attach to the occupancy ; but if he has been exempted, the special condition ceases to attach to the occupancy. If a person who has been exempted transfers his occupancy to a person who has not been exempted, the special condition will, by virtue of the notification under clause (1) of the section, attach to the occupancy as soon as it is transferred to the non-exempted person. If a non-exempted person relinquishes his occupancy, the Collector cannot re-grant it to him free of the special condition. When the Collector grants the occupancy of Government waste land, the condition of non-transferability without the previous sanction of the Collector attaches to the grant unless the grantee has been exempted under clause (2). To a person not exempted under clause (2), the Collector may grant permission to transfer only in the case of a given particular transfer ; he cannot give a general permission to transfer ; if he deems the person fit to exercise such a general power, he should proceed in the manner prescribed in order No. 2 above. When a person who has been exempted by name under clause (2) dies, the exemption granted to him

expires with him. The occupancy of land in his occupancy at the time of his death remains free of the condition imposed by clause (1) only if the person or persons to whom the occupancy passes have been exempted under clause (2); if the occupancy passes to a person not exempted under clause (2), it becomes at once subject to the operation of the section *i. e.*, to the condition of non-transferability without the previous sanction of the Collector. Similarly, on the death of a person who is a member of a class which has been exempted under clause (2), the lands in his occupancy will be free from, or subject to, the special condition according as the persons to whom the occupancy of them passes are, or are not, persons or members of a class of persons, exempted under clause (2).

It will be observed that in the areas referred to in paragraph 4 above the non-transferable tenure stands on a basis essentially different from that on which it rests in areas dealt with in paragraph 5. In the former the restrictive condition is imposed and may be removed at the discretion of the Collector guided by the executive orders of Government. In the latter it applies to all occupancies by the force of the notification under Section 73A (1) and can be removed in particular instances only by a further notification under Section 73A (2). (G. R. R. D. No. 3875, dated 22nd April, 1909).

G. 7. In 1899 certain Land in the village of Umbardi Budruk in the Nandurbar Taluka was mortgaged to a Bania who has subsequently been exempted from the operation of the section 73 A. Government rejected to have the Bania's mortgage rights recorded in the Record of Rights Register. (G. R. No. 7672 dated 25th August 1910.)

G. 8. Delegation of powers.—sub-divisional officers can pass orders under this section. (G. R. R. D. No. 5295 dated 1st June 1911, item 42.)

G. 9. Land on restricted tenure should be sold on restricted tenure only. (G. R. No. 5964 dated 23rd June 1911.)

J. 1. A Bhil was given land gratis. The word Bhogawata in the Kabulayat was held to show that the tenure was a restricted one. (Appeal No. 693 of 1892, page 152 P.J., dated 20th April 1894. Dhabu vs. Harsing.)

Relin-
quishment.

[^a] **74.** The occupant may relinquish his land, that is, resign it in favour of Government, but subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any person (other than Government or the occupant), by giving notice in writing to the Mámlatdár or Mahálkari before the 31st March in any year or before such other date as may from time to time be prescribed in this behalf by the Governor in Council, and such relinquishment shall have effect from the close of the current year :

provided that no portion of land which is less in extent than a whole survey number or subdivision of a survey number may be relinquished.[^a]

[a-a] This section was substituted by Bom. IV of 1913, s. 32 for the original section.

SUMMARY (s. 74.)

Equity of redemption when extinguished	...	...	...	J. 4.
House—Retention of—after relinquishment allowed...	...	...	...	G. 9.
Notices—(1) Exempted from				
(a) Registration	...			N. 1.
(b) Court fee	...	...		G. 1.

- | | |
|--|----------------|
| (2) In Inam villages | G. 2, 3, 4, 5. |
| | J. 1. |
| (3) In respect of Inam lands. | G. 7, 12. |
| (4) Of absolute relinquish-
ment before | |
| (a) Avalkarkuns | ... G. 10. |
| (b) Forest settlement
officer | ... G. 8. |
| (5) Of partial relinquishment
not allowed | ... G. 11. |
| (6) On behalf of minors and
lunatics | ... G. 6. |
| (7) Valid without the con-
sent of heirs | ... J. 2. |
| Sale—Of land after relinquishment in-
valid | ... J. 3. |

N. I. Notices given under section 74 or section 76 of the Bombay Land Revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land by holders of such land, are exempted from registration. (*Vide* section 90 (I) (e) of the Indian Registration Act (XVI of 1908).)

G. I. Stamp duty on notice of relinquishment.—A notice of relinquishment is not a surrender of a lease under Article 16 of Schedule of Stamp Act, 1879. If the notice can properly be regarded as "an application for leave to relinquish land" then it is exempt from Court fee by section 19 (cl. XI) of Act VII of 1870. (G. R. No. 3009, dated 10th June 1880.)

G. 2. Relinquishments and agreements in alienated villages.—When a Survey Settlement has not been introduced into an alienated village, neither Section 74 nor any other section which relates to the rights and responsibilities of occupants in unalienated villages has any force in it.

When a Survey Settlement has been introduced into an alienated village, then Section 74 is appli-

cable to the occupants in it, and relinquishments must, of course, be made to the Mamlatdar or Mahalkari until Government give the Inamdar power to receive them under Section 88 (e). (G. R. No. 3439, dated 15th June 1881.)

G. 3. Government do not consider that it was the intention of the Legislature to interfere with the right of an Inamdar to give out unoccupied land in his village or holding for cultivation or to accept the relinquishment of the same from the occupant. (G. R. No. 5730, dated 1st October 1881.)

G. 4. Resolution No. 5730 of 1st October 1881 is not inconsistent with Resolution No. 3439 of 15th June 1881. No doubt, when a Survey Settlement has been introduced into an alienated village, Section 74 is made applicable to it by Section 217. But Section 88 (e) empowers the Governor in Council to authorize the Inamdar to receive notices of relinquishment instead of the Mamlatdar, and it was doubtless the intention of the Legislature that interference with Inamdars should ordinarily be avoided in this manner. (G. R. No. 7045, dated 23rd November 1881.)

G. 5. As regards Rajinamas and Kabulayats in alienated villages it is necessary to note that they are given in one of the three following ways :—

1. Absolute relinquishment (Section 74).
2. Relinquishment in favour of another person and the agreement executed by that person (Section 74).
3. Agreement executed by a person taking up new land (Rule 32).

As regards 1 and 2.

- (a) In *unsurveyed* alienated villages Inamdars should continue to exercise the powers as they have hitherto been doing, Section 74 not being applicable to such villages.

- (b) In *surveyed* alienated villages the Inamdars should, as far as possible, under Section 88, be invested where necessary with the powers contemplated by Section 74.

As regards 3.

Section 60 does not apply to alienated lands, and the power of the Inamdars in respect of such agreement is unrestricted whether in *surveyed* or *unsurveyed* villages (*G. R. No. 959, dated 10th February 1882*).

G. 6. Relinquishments of minors' lands:—Friends or relatives are not legally constituted administrators or managers of estates of minors or lunatics and have no power to act in any way for such minors or lunatics, and the Collectors would not be justified in accepting a notice of relinquishment, or agreement to occupy, from such friends or relatives. (*G. R. No. 7074, dated 11th October 1882.*)

G. 7. Applicability of Sections 74, 76 and 79 to alienated lands.—The extent, to which the provisions of Sections 74 and 79, are to be held applicable to alienated lands has been explained in the following letter from the Legal Remembrancer:—

"2. The only sections of Revenue Code, which with reference to the point in question, it is practically necessary to consider are sections 74, 76 and 79. Section 76 says that the provisions of section 74 are to apply 'as far as may be,' to the holders of alienated land.

"3. The section does not say 'the registered holders of alienated land,' because the Code nowhere recognizes such persons and does not clothe them with any special rights or responsibilities as it does 'registered occupants.'

"4. For this I am unable to concur in the argument that in Section 79 of the Code the word 'registered' was meant to apply to 'holder of alienated land' as well as 'occupant.' The Legis-

lature was not cognizant of the existence of 'registered holders' as distinguished from holders in general of alienated lands and for aught that appears in the Code the Collector may quite legally record in his books the name of every 'co-holder of such lands.

"5. But Section 76 makes the 'provisions of Section 74 applicable to holders of alienated land only 'as far as may be,' and it seems to me that the provisions of paragraph 2 of Section 74 cannot apply to such holder. If there is a sole holder the provisions of the 1st paragraph of that section apply without difficulty and as also do the provisions of Section 79. And if there are two or more co-holders, and they act jointly, and the Collector's records bear their joint names, both sections will also operate without trouble.

"6. If there are two or more co-holders, and the name of one only is entered in the Collector's book, the one whose name is entered, may certainly relinquish or transfer his own interest under Section 74, and Section 79 would apply to him; but I doubt very much whether a resignation by him would legally bind his co-holders. There is also nothing in paragraph 1 of Section 74, that would prevent any one of the co-holders from relinquishing or transferring his own individual interest; but if the Collector's records do not bear his name and the Collector declines to record the relinquishment or transfer of his individual interest in the holding, Section 79 cannot operate against him or his transferee.

"7. Another difficulty which militates against the construction of Section 79, *viz.*, that the word 'registered' is meant to apply to 'holder of alienated lands,' as well as 'occupant' is that the liability for the land-revenue due on alienated holdings is nowhere legally imposed on the 'registered holder,' alone or even in the first instance.

Section 136 of the Code says that 'the superior holder shall be primarily responsible to Government for land-revenue of alienated land.' The singular number imports the plural, and if there are two or more superior holders with co-equal rights they all are primarily liable for the land-revenue; to the one whose name is entered in the Collector's book no special or prior liability legally attaches: although for convenience sake it may be the practice to look to him for payment."

Government therefore left undecided the question *viz.*, whether the obligation of recording the name in the Revenue Records applies alike to holders of alienated and unalienated land till an amendment of the Code. (G. R. No. 5019, dated 19th June 1885 and Government Memo No. 7859, dated 15th November 1886.)

G. 8. Officers authorised to accept notices of relinquishment.—When an occupant agrees before a Forest Settlement officer to relinquish his land he should be told by that officer to sign a notice of absolute relinquishment in his presence and that officer should then write an endorsement on it that he has satisfied himself as to the identity of the party signing the notice and send the notice to the Mamlatdar who, if he accepts it without further inquiry, will be held to have exercised due care enjoined by Rule 76 of the rules framed under section 214. (G. R. No. 1081 dated 10th February 1886 and G. R. No. 1708 dated 4th March 1886)

G. 9. Retention of house allowed :—From No. 17 of the Survey Rules (Survey and Settlement Manual, page 37) it will appear that the custom of obliging a rayat who threw up a field, to relinquish at the same time the house attached to that field was abolished under the authority of Government letter No. 5593 of 1848-paragraph 42. (G. R. R. D. No. 5512, dated 3rd August 1886.)

G. 10. Awalkarkuns are authorised to accept notices of relinquishment under this section during

the absence of Mamlatdars from head quarters. When Mamlatdars accept such notices without further enquiry they will be held to have exercised the due care enjoined by Rule 74. (G. R. No. 1743, dated 2nd March 1889.)

G. II. Occupancy defined—Partial relinquishment not allowed :—An occupancy signifies the sum of the rights vested in an occupant as such [Bombay L. R. Code, Sec. 3 (18)]. Amongst other rights which an occupant possesses is that of constructing wells in the land for the better cultivation thereof (*ib.* Section 65). Section 74 of the Code authorizes an occupant to relinquish his occupancy either absolutely or in favour of a specified person. If at the time of such relinquishment a well constructed by the occupant as aforesaid, still exists in the land, it, too, must of necessity be included in the relinquishment. The Code does not authorize a partial relinquishment. A well constructed in land by its occupants becomes part and parcel of the land by accession *solo cedit quod solo inedicatur*. So long as the person who constructed it remains the occupant of the land, the well continues to be his property, but if he relinquishes absolutely, that is throws up the occupancy, all his rights in and over the land and its accessories cease and determine and he can claim no reservation. If he relinquishes in favour of another person, *i. e.*, transfers his occupancy, a revenue officer will be clearly justified in declining to recognize for the purpose of Section 74 of the Land Revenue Code, any such transaction which is not really a relinquishment of the occupancy, *i. e.*, a transfer of the aggregate of the rights vesting in the transfer or in virtue of his being the occupant. A transfer of a portion only of such rights is not a transaction of such a kind as the section contemplates. (G. R. No. 7152, dated 8th October 1890.)

G. 12. The entry is a matter of grace :—Government accepted the following opinions given by the Remembrancer of Legal Affairs :—

Section 74 is certainly extended by section 76 to holders of alienated land, but only 'as far as may be,' and this limitation appears to me to preclude the creation by these sections, by inference of a special class of 'registered' holders of alienated land similar to 'registered' holders of unalienated land. The concluding clause of Section 79 again seems to presuppose some foregoing provisions of the Code for the record of transfers of alienated land as in the case of unalienated land, but it is not enough of itself to create such provisions. Section 136, on the other hand contrasts 'superior' holders and not 'registered' holders of alienated land with 'registered' occupants of unalienated land and the definition of 'superior' holders in section 3 (13) is materially different from that of 'registered' occupants in Section 3 (17). Superior holder could not be read as equivalent to 'registered' holder. * * * *

The object of section 76 is to ensure Government receiving notice of (*such*) a transfer (of a share) and not to limit in any way the right of the holders to make it. When the notice has been given 'as far as may be' in the manner required by Section 74, the transfer must be recognized and cannot be ignored on the strength of any provisions in section 74 or 79 which apply strictly only to 'registered' occupants of unalienated land.

No person can claim an entry in Government records as of right of his name as the registered holder. In view of the general practice of making such entries (G. R. No. 5019, dated 19th June 1885, under section 74) and to the apparent intention of the Code to have legalized that practice (G. R. No. 5519, dated 12th August 1891, under section 136) it is for Government to decide whether they will direct the entry to be made as a matter of grace. (G. R. No. 10013, dated 9th December 1905.)

J. I. The first and second defendants were subtenants of the third defendant, who had certain land which was part of the inam village of D. In 1883

the third defendant executed a Rajinama in the following terms, which he gave to the receiver who had been appointed by the Court to manage the village :—" Up to the present time my father and I have been cultivating the land, but the land belongs to the Inamdar. I have no title over it, and the Inamdar can give it for cultivation to any one he pleases." Shortly after the date of this Rajinama the Inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants who had remained in possession.

Held, that the plaintiff was entitled to the land. The Rajinama operated as a relinquishment of the tenancy by defendant No. 3 under Section 74 of Bombay Act V. of 1876.

Held, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. (Bhutia Dhondu *vs.* Ambo.—I. L. R., Bombay, Vol. XIII., 1889, page 294.)

J. 2. The holder of a survey field is not incompetent to resign it without the consent of his heirs. So also to the validity of a resignation of miras land by a mirasdar to Government the consent of his heirs is not requisite. (A mirasdar is now no less than an occupant.) B. H. C. R. 197, B. H. C. R. 133.

J. 3. Sale by a Khatedar after Rajinama.—C, a registered khatedar of unalienated lands subject to the provisions of the Land Revenue Code, executed a rajinama relinquishing the khata in favour of D, and on the same day, D executed a kabulayat to the Mamlatdar undertaking to pay the land revenue and applied to have his name entered in the Government records as the registered khatedar of those lands. Some years later C sold the very lands to the plaintiff, who sued to recover possession from D, alleging that there having been gift of the lands by C to D, it could not operate in

absence of a registered document under Section 123 of the Transfer of Property Act :—

Held, that the Rajinama by C was an extinguishment of his interest in the lands and the effect of the kabulayat was that D came in by agreement with Government as an occupant in his own right; that, therefore, C had no interest in the lands capable of transfer at the date of sale; and that the plaintiff got nothing by his sale-deed.

18. Bombay Law Reporter page 976.

J. 4. Rajinamas and Kabulayats.—One Venkappa mortgaged four survey numbers to Virappa for Rs. 300 on the 30th May 1876. Subsequently the mortgagor transferred his right under the mortgage to the mortgagee by Rajinama and Kabulayat. These documents were not registered. A suit was filed to take accounts of the mortgage under the provisions of the Dekkan Agriculturists' Relief Act. Held that (1) the Rajinama and Kabulayat, governed by the Bombay Land Revenue Code (Bombay Act 5 of 1879), are not compulsorily registrable, (2) they cannot in themselves be documents of transfer; but they are fairly conclusive evidence that a transfer has in fact been made, (3) the suit was rightly dismissed by the Court of first instance, as the Rajinama and Kabulayat effectually extinguished the plaintiff's equity of Redemption. (I. L. R. 42 Bombay, page 359.)

75. *Repealed by Bom. IV of 1913, section 33 (1)*

[^a] **76.** The provisions of the [^b] last section- [^b] shall apply, as far as may be, to the holders of alienated land: provided that,

- (a) it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances
- Relinquishment of land described in paragraph 1 of section 49.

described in the first paragraph of section 49 until the commuted assessment payable in respect of such portion of land has been determined under the provisions of the said section; and that

- (b) if any person relinquish land on which, under the circumstances described in section 51, a larger revenue is levied than would ordinarily be leviable on such land, he shall be deemed to have relinquished also the land held with it which is wholly or partially exempt from payment of revenue.

Relinquishment
of land described in
section 51.

a] As to the local repeal of s. 76, see para. 5 of foot-note [a] on page I, *supra*.

[b-b] These words were substituted for the original words "the two last sections" by Bm. IV of 1913, s. 33 (2).

N. I. See J. 4 under section 74.

G. I. Absolute resignation by an Inamdar of a part of his holding given as a subordinate (pôt) Inam.—There are cases in which an Inamdar or his predecessor in title has, without parting with his own inam right, made a grant of some land in his holding to a third person and his heirs in perpetuity either entirely rent-free or on terms which are advantageous to the grantee. But afterwards finding that the burden of paying the Government dues on the land included in such sub-grant while he receives little or no rent from the sub-grantee is greater than he can support naturally seeks to get rid of this result by absolute relinquishment of this portion.

In such cases it is not desirable to permit such resignations because they would encourage Inamdars to break faith with their sub-Inamdars. So

long as the relations of the Inamdars and their *pot* inamdars remain in *status quo*, either the one or the other can resort to the Civil Court if so minded to obtain a declaration of their respective rights. If such resignations are accepted with the consent of the sub-Inamdars, the proportionate deduction shall be made in the amount payable by the Inamdar and the resigned holding should be considered to all intents and purposes as unalienated land and the full assessment should be levied upon it. (G. R. No. 4235, dated 27th May 1885.)

77. If any person relinquishes land, the way to which lies through other land which he retains, the right of way through the land so retained shall continue to the future holder of the land relinquished. Right of way to relinquished land.

78. Nothing in [a] section 74 [a] shall affect—

[b] the validity of the terms or condition of any lease or other express instrument under which land is, or may hereafter be, held from Government. Saving of operation of section 74 in certain cases.

[a-a] These words were substituted for the original words "section 75 and 76" by Bom. IV of 1913, s. 34.

[b] Clause (a) and the letter "b" repealed by Bom. IV of 1913, s. 34, are omitted.

79. *Repealed by Bom. IV of 1913, s. 35.*

[a] **79A.** Any person unauthorizedly occupying, or wrongfully in possession of, any land Summary eviction of person unauthorizedly occupying land.

(a) to the use and occupation of which he has ceased to be entitled under any of the provisions of this Act, or

(b) [b] which is not transferable without previous sanction under section 73A or by virtue of any condition lawfully [c] annexed to the tenure [c] under the provisions of section 62, 67 or 68,

may be summarily evicted by the Collector.

[a] Section 79A was inserted by Bom VI of 1901, s. 12. As to its local modification, see foot-note [a] on p. 1, *supra*.

[bj] This word was substituted for the original words "of which the occupancy right" by Bom. IV of 1913, s. 36.

[c] These words were substituted for the original words "annexed to the occupancy" by Bom. IV of 1913, s. 36.

H 659—6.

SUMMARY (s. 79A.)

Section 79A —(1) Not applicable to		
civil court decree ...	J	1.
(2) Object of—... ..	N	1.
(3) Retrospective effect.	G.	1
Suit against a public officer	J.	2.
Tahal	G.	2.

N. 1. Section 79-A of the Land Revenue Code was specially enacted in order to provide for breach of agreements such as A, B, and C under Section 67. If for instance any person builds a privy in an unauthorised place or does not leave the stipulated amount of vacant ground, then the Collector can first evict him from the whole occupancy, and take possession of it. Then after removing the offending structures, &c he can restore it to the evicted occupant on any terms or payments which may be agreed and in accordance with the rules of Government. Thus, if the Collector cannot meet the cost of demolition out of the sale of the materials demolished, he might make the evicted party pay this cost as a condition of restoration.

G. 1. Retrospective application.—The following opinion of the Remembrancer of Legal Affairs was circulated for information:—

The mere fact that the unauthorised transfers of land originally granted on the non-transferable tenure were made prior to 1901 will not prevent the application of section 79A to the case of any person who is now unauthorisedly occupying the land in question. There is nothing in the section or the rule against retrospectivity to justify a contrary view.

The transferees cannot directly claim the benefit of section 41 of the Transfer of Property Act, 1882 (*re* transfer by ostensible owner), because of the Crown Grants Act, 1895. But on the other hand it has been held that Government are as much bound by the equitable rules of estoppel as would be any other person, *cf.* I. L. R., 25 Bom. 714, at pp. 746, 750, and I. L. R., 26 Bom. 271, at p. 277. If, therefore, any transferee can prove that the revenue authorities have, by their declarations or conduct, so acted as to misled him into the reasonable belief that the transferors had the usual power to transfer, then it might be held that the Collector was estopped from treating the land as non-transferable without sanction and could not avail himself of the power conferred by section 79 A. The mere facts that the tenures were entered in the revenue records in the same way as ordinary occupancies, and that assessment was accepted from the transferees, would, in the absence of special circumstances, not operate as such an estoppel, *cf.* I. L. R., 23 All-442, and 5 Bom. L. R., 956, at pp. 966, 967, and 972, 973. *Prima facie* there would be good grounds for contending that rajinamas and kabulyats accepted by the Mamlatdars and Mahalkaries would not operate as an estoppel. (G. R. R. D. No. 9257, dated 20th September, 1907.)

G. 2. Unless a distinct condition relating to tahal is inserted eviction under section 79-A is

not justified. (G.R. No. 1339, dated 7th February 1912.)

J. 1. Possession under decree of the civil court.—The powers given to the Collector by section 79-A of the Land Revenue Code, 1879, can be exercised only in cases of wrongful possession. It does not extend to cases where possession is obtained under the decree of a Civil Court. The Collector has, for the exercise of the power, to form his own opinion and decide whether in any particular case the possession is wrongful; but there is no provision in the code which gives finality to the Collector's order of eviction so as to exclude the jurisdiction of a Civil Court to decide that the person evicted by that order was in rightful occupation.

The talukdari settlement officer,

vs.

Umiashankar Narsiram Pandya.

12 Bombay Law Reporter

page 837.

Indian Law Reports

—35 Bombay 72.

J. 2. Suit against public officer.—The collector, holding powers of the Talukdari settlement officer and acting under section 79-A of the Bombay Land Revenue code, 1879, served upon the plaintiff a notice, asking him to vacate certain Land which he was declared to have held illegally without any right. The plaintiff was also warned that, if he did not comply with the notice, steps would be taken to evict him. The plaintiff sued for an injunction to restrain the collector from taking possession summarily of the Land. No notice of suit, required by section 80 of the civil procedure code, 1908, was given:

Held, that the declaration and the notice were distinct acts on the part of the collector done by him in his official capacity; and therefore, a notice

to the collector by the plaintiff was necessary under section 80 of the civil procedure code as a condition precedent to the maintenance of the suit.

Talukdari Settlement officer vs. Bhaijibhai.
14. Bombay Law reporter page 577.

80. In order to prevent the forfeiture of ^{To prevent forfeiture of occupancy certain persons other than the occupant may pay the land revenue. Collector may assist such persons in recovering the revenue from other parties liable therefor.} an occupancy [a] under the provisions of section 56 or of any other law for the time being in force, through non-payment by the [b] occupant [a] of the land revenue due on account thereof, it shall be lawful for any [c] person interested [c] to pay on behalf of such [b] occupant [a] all sums due on account of land revenue, and [d] the Collector shall on due tender thereof [d] receive the same. And in any such case the Collector may [e] under section 86 [e] give to the person who has paid the land revenue as aforesaid [f] aid for the recovery of any portion of such land-revenue [f] which he may consider to be properly payable by other persons [b]:

Provided that nothing authorized or done ^{Provided} under the provisions of this section shall affect the rights of the parties interested as the same may be established in any suit between such parties in a Court of competent jurisdiction.

[a] As to the local modification of the words "occupancy" and "occupant," see para 5 of foot-note [a] on p. 1, *supra*.

[b] Words repealed by Bom. IV of 1913, s. 37, are omitted.

[c-c] These words were substituted for the original words "co-occupant tenant, mortgagee or other person interested in the continuance of the occupancy" by Bom. IV of 1913, s. 37 (a).

[d-d] These words were substituted for the original words by Bom. IV of 1905, 1st Sch.

[e-e] These words were inserted by Bom. IV of 1913, s. 37 (b).

[f-f] These words were substituted for the original words "such aid for the recovery of the proportional amounts" by Bom. IV of 1913, s. 37 (c).

81. *Repealed by Bom. IV of 1913, s. 38.*

Governor
in Council
empower-
ed to
suspend
operation
of section
60 or 74.

[^a] **82.** It shall be lawful for the Governor in Council by notification in the *Bombay Government Gazette* from time to time :

- (a) to suspend the operation of section 60 or 74, or of both, within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and
- (b) to cancel any such notification.

During the period for which any notification under the above clause (a) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

[a] As to the local repeal of section 82, see para. 5 of footnote [a] on p. 1, *supra*.

CHAPTER VII.

OF SUPERIOR AND INFERIOR HOLDERS.

Amount
of rent
payable
by tenant.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking, or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be